



**STATE OF TENNESSEE**  
**DEPARTMENT OF COMMERCE AND**  
**INSURANCE TENNESSEE REAL ESTATE**  
**COMMISSION**  
**500 JAMES ROBERTSON PARKWAY**  
**NASHVILLE, TN 37243**  
**615-741-2273**  
<https://www.tn.gov/commerce/regboards/trec.html>

**MINUTES**

The Tennessee Real Estate Commission held a meeting November 12, 2020 at 8:30 a.m. CST via the WebEx meeting platform based at the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, TN 37243. The meeting was called to order by Chairman John Griess. Chairman Griess welcomed everyone to the Board meeting.

Executive Director Caitlin Maxwell read the public disclaimer and called the roll. The following Commission Members were present: Chairman John Griess, Vice-Chair Marcia Franks, Commissioner Steve Guinn, Commissioner Joe Begley, Commissioner Jon Moffett, Commissioner Stacie Torbett, Commissioner DJ Farris, Commissioner Joan Smith, and Commissioner Geoff Diaz. Quorum Confirmed. Others present: Executive Director Caitlin Maxwell, Associate General Counsel Anna D. Matlock, Associate General Counsel Shilina Brown, Deputy General Counsel Mark Green, Paralegal Carol McGlynn, Education Director Ross White, and TREC staff member Aaron Smith.

Associate General Counsel Anna Matlock read the “Statement of Necessity” into the record.

Motion to approve the “Statement of Necessity” was made by Commissioner Diaz and seconded by Commissioner Farris. Motion passed unanimously by roll call vote.

The November 12, 2020 board meeting agenda was submitted for approval.

Motion to approve the agenda was made by Commissioner Vice-Chair Franks and seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

Minutes for the October 08, 2020 board meeting were submitted for approval.

Motion to approve the October 08, 2020 minutes was made by Commissioner Farris and seconded by Commissioner Guinn. Motion passed unanimously by roll call vote.

## **BOARD ORIENTATION**

Executive Director Maxwell and Associate General Counsel Anna Matlock conducted the annual board member orientation, which included topics such as standard of ethics, habits of effective board members, unreasonable restraint of trade, public records and the Open Meetings Act, disciplinary actions and rulemaking updates, and conflicts of interest.

## **INFORMAL APPEARANCE**

Tyler Wolf appeared before the Commission with his Principal Broker Kent Leadbetter seeking approval for his Affiliate Broker license.

Motion to approve Tyler Wolf was made by Commissioner Diaz and seconded by Vice-Chair Franks. Motion passed unanimously by roll call vote.

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## **EDUCATION REPORT**

Education Director Ross White presented the education report to the Commission.

Motion to approve courses N1-N20 was made by Vice-Chair Franks and seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

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## **EXECUTIVE DIRECTOR'S REPORT**

Director Maxwell updated the Commission on licensing & complaint numbers. She also informed them on the below topics.

- **LICENSING:** Director Maxwell advised the commission that TREC staff processed 627 initial applications for the month of October.
- **COMPLAINTS:** Director Maxwell, and Associate General Counsel clarified for the commission the complaint process and statutes.
- **KENTUCKY RECIPROCAL AGREEMENT:** Director Maxwell advised that she has met with the Director of KREC. The agreement is still being reviewed.
- **MISCELLANEOUS:** Director Maxwell advised that we are processing E&O renewals

for the 2021-2023 period.

**LEGAL UPDATE:** General Counsel Pamela Spicer introduced a new Associate General Counsel Pamela Vawter to the Commission.

**RULEMAKING HEARING:** Associate General Counsel Anna Matlock conducted the hearing concerning “Advertising and Criminal Convictions Rules.”

Motion to accept the rule changes to advertising was made by Commissioner Smith and seconded by Commissioner Diaz. Motion passed 8-0 with Vice Chair Franks absent for the vote.

Motion to accept the rule change as it relates to the Fresh Start Act was made by Commissioner Diaz and seconded by Commissioner Guinn. Motion passed 8-0 with Vice-Chair Franks absent for the vote.

**CONSENT AGENDA:**

The following cases were presented to the Commission via a Consent Agenda. All cases were reviewed by legal, legal has recommended either dismissal or discipline.

A motion to accept counsel’s recommendation for cases 1-88 with exception of the following cases which were pulled for further discussion: 2020051531, 2020051881, 2020052901, 2020055081, 2020048091, 2020053321, 2020055411, 2020042881, 2020047291, 2020057641, 2020051761, 2020055471, 2020054351, 2020057821, 2020058701, 2020058921, 2020059571, 2020052531, 2020051521, 2020057701, 2020066241, 2020063351, 2020061541, 2020039331, 2020029981, 2019031421, 2017077801 was made by Commissioner Farris and seconded by Commissioner Moffett. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020051531, Commissioner Farris made the motion **to send a Letter of Instruction**. The motion was seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission, Vice-Chair Franks made the motion **to authorize a formal hearing and assess a civil penalty in the amount of \$8, 000.00 for violations of the Tennessee Real Estate Broker License Act of 1973 by the Respondent’s failure to account for or to remit any moneys coming into the licensee’s possession that belong to others within a reasonable time (Tenn. Code Ann. §62-13-312(b)(5)); failure to return the security deposit monies to the Complainant and for failure to exercise reasonable skill and care, failure to provide services with honesty and good faith, failure to timely account for trust fund deposits and all other property received from any party to the transaction pursuant to Tenn. Code Ann. §62-13-403(1), (4), and (6). The Commission also voted and elected for Respondent to take the Principal Broker CORE class within 180 days of the execution of the Consent Order and for those hours not to count toward Respondent’s CE requirement.** On complaint 2020051881, seconded by Commissioner Diaz. Motion passed 6-3 by roll call vote. Commissioner Begley, Commissioner Farris, Commissioner Torbett voted against the motion.

After further discussion by the Commission on complaint 2020052901, Commissioner Farris made the motion **to accept counsel’s recommendation**. The motion was seconded by Commissioner

Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020055081, Vice-Chair Franks made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Farris. Motion passed unanimously by roll call vote

After further discussion by the Commission on complaint 2020048091, Vice-Chair Franks made the motion **accepted counsel's recommendation, but also requested to have a complaint opened against the Principal Broker**. The motion was seconded by Commissioner Farris. Motion passed 8-1 with Commissioner Guinn voting against the motion.

After further discussion by the Commission on complaint 2020053321, Vice-Chair Franks made the motion to **Defer to next Commission meeting and obtain additional information from the Principal Broker**. The motion was seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020053321, Vice-Chair Franks made the motion **Defer to next Commission meeting and obtain additional information from the Principal Broker**. The motion was seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020055411, Vice-Chair Franks made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020042881, Commissioner Guinn made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Moffett. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020047291, Commissioner Diaz made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Smith. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020057641, Vice-Chair Franks made the motion **to accept counsel's recommendation but open a complaint against the Principal Broker**. The motion was seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020051761, Vice-Chair Franks made the motion **to accept counsel's recommendation but open a complaint against the Principal Broker**. The motion was seconded by Commissioner Diaz. Motion passed 8-0 by roll call vote with Commissioner Farris abstaining.

After further discussion by the Commission on complaint 2020055471, Vice-Chair Franks made the motion **to close this complaint and open a complaint against the Principal Broker**. The motion was seconded by Commissioner Begley. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020054351, Vice-Chair Franks made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020057821, Commissioner Diaz made the motion **to dismiss this complaint**. The motion was seconded by Commissioner Begley. Motion passed 7-1 with Commissioner Guinn voting against the motion. Commissioner Torbett was absent for the vote.

After further discussion by the Commission on complaint 2020058701, Commissioner Begley made the motion **to dismiss and close the complaint**. The motion was seconded by Commissioner Farris. Motion passed 8-0 with Commissioner Torbett absent for the vote.

After further discussion by the Commission on complaint 2020058921, Vice-Chair Franks made the motion **to send a Consent Order with a \$500.00 civil penalty for the advertising violation**. The motion was seconded by Commissioner Begley. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020059571, Commissioner Begley made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Moffett. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020052531, Commissioner Farris made the motion **to accept counsel's recommendation**. The motion was seconded by Vice-Chair Franks. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020060551, Commissioner Begley made the motion **to dismiss this complaint as the Respondent is licensed**. The motion was seconded by Commissioner Farris. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020051521, Commissioner Farris made the motion **to accept counsel's recommendation**. The motion was seconded by Vice-Chair Franks. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020057701, Commissioner Farris made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Guinn. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020066241, Commissioner Farris made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Diaz. Motion passed 7-0. Chairman Griess and Vice-Chair Franks were absent for the vote.

After further discussion by the Commission on complaint 2020063351, Vice-Chair Franks made the motion **to authorize a contested case proceeding and assess a \$4,000.00 civil penalty and a six (6) month license suspension for the violation of making false representation by making substantial and willful misrepresentation pursuant to Tenn. Code Ann. § 62-13-312(1) in submitting false education certificates to the Commission**. The motion was seconded by Commissioner Guinn. Motion passed 8-0 with Commissioner Torbett absent for the vote.

After further discussion by the Commission on complaint 2020061541, Vice-Chair Franks made the motion **to close**. The motion was seconded by Commissioner Diaz. Motion passed 8-0 with Commissioner Torbett absent for the vote.

After further discussion by the Commission on complaint 2020039331, Commissioner Diaz made the motion **to close and flag this matter**. The motion was seconded by Commissioner Smith. Motion passed 7-0. Vice-Chair Franks was absent for the vote and Commissioner Torbett abstained.

After further discussion by the Commission on complaint 2020029981, Commissioner Begley made the motion **to authorize a formal hearing and assess a civil penalty in the amount of \$1000.00 for unlicensed activity**. The motion was seconded by Commissioner Smith. Motion passed 8-0. Vice-Chair Franks was absent for the vote.

After further discussion by the Commission on complaint 2019031421, Commissioner Farris made the motion **to close**. The motion was seconded by Commissioner Diaz. Motion passed 8-0 with Vice-Chair Franks absent for the vote.

After further discussion by the Commission on complaint 2017077801, Commissioner Diaz made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Moffett. Motion passed 8-0 with Vice Chair Franks absent for the vote.

### **New Cases to be Presented**

- 1. 2020048861**  
**Opened: 7/13/2020**  
**First Licensed: 1/16/2014**  
**Expires: 1/15/2022**  
**Type of License: Affiliate Broker**  
**History: None**

The Complainant is a licensed Tennessee Real Estate Broker and the Respondent is a licensed Tennessee Affiliate Broker. The Complainant alleges the Respondent is using improper marketing on the firm website because the name of the firm is not being used.

The Respondent provided a response and stated the website directs consumers to the company. The URL is not an advertising platform and just a domain. The website does not identify the team as a broker. Also, the Respondent has purchased a new domain and filled out the necessary paperwork to move the website link to the new domain name. If there were any errors, the Respondent has corrected the errors.

There are no advertising violations on the website based on the information reviewed and researched.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

2. **2020048311**  
**Opened: 7/20/2020**  
**First Licensed: N/A**  
**Expires: N/A**  
**Type of License: Time Share Registration Exempt**  
**History: None**

Complainant is a Tennessee resident and the Respondent holds a Tennessee timeshare exemption registration.

The Complainant received a letter in July 2014, for a three-night stay at a hotel on the beach in Myrtle Beach, South Carolina and Respondent stated the hotel stay would be free if the Complainant attended a 90-minute sales presentation. This was being marketed as a vacation club and not a timeshare. The Complainant ended up attending the meeting for 4-5-hour period. The Complainant purchased a biannual timeshare property for a 10-year period. The following year, the Complainant visited a resort in Tennessee and were also asked to attend a sales presentation. They continued to visit the resorts and attend the timeshare presentation meetings. In May 2019, the Complainant attended a timeshare presentation at a resort in South Carolina. The Complainant was interested in changing the timeshare interest from every other year deed into an annual deed. The Complainants allege the Respondent never informed them about the cancellation policies or maintenance fees. The Complainants were told the maintenance fees were incorporated in the cost of the timeshare and would not be a separate fee. The Complainant later realized it was a 10-year contract and this was not explained by the Respondent. The Complainant has found out the timeshare is worth nothing and their household bills are delinquent because of this timeshare. The Complainant alleges the Respondent engaged in fraud.

The Respondent provided a response and stated on December 27, 2013, the Complainant made an inquiry to the Respondent's marketing department concerning a stay at a property for \$199 and the \$199 would be refunded if the Complainant attended a timeshare presentation during the course of the mini-vacation. The Complainant attended on July 2, 2014 for the 4<sup>th</sup> of July long weekend. The Complainant purchased a biennial interest in the report. In May 2019, the Complainant again visited the resort and attended a timeshare presentation and met with a sales consultant. The Complainant elected to purchase and to trade-in the initial interest for an annual ownership. The Respondent stated the timeshare presentations are for the purpose of soliciting timeshare sales and there is no requirement to attend the presentation for the full duration. There is no pressure or coercion for anyone to make a purchase. Also, attending the sales presentations are strictly voluntary and not required. The Complainant has visited the resorts and not attended a sales presentation. There is no requirement to attend and the Complainant could decline the offer and/or any incentives being offered. Also, there should not have been any problems with bookings if they were booked in advance. All purchasers are provided with a copy of the Member Guide and it clearly states how many points are required to secure reservations at the resort locations. All reservations are based on availability and are clearly disclosed to the Owner in connection with

the purchase. All fees and costs are clearly disclosed on the Owner Clarification Form and the Complainant executed this form on two occasions when purchasing the timeshare for the first time and the second time. The Respondent alleges the Complainant has enlisted the assistance of a third-party to assist with the filing of the Complainant and this correspondence is very similar to the type of “consumer advocacy” complaint letters the Respondent has received from other owners in an effort to extricate timeshare owners from their contractual obligations. These groups encourage owners to forego further payments to the developer and what typically happens the owner’s timeshare interest is foreclosed upon for non-payment resulting in irrevocable harm to the timeshare owner’s credit. The owners are usually not even aware of the damaging consequences until it is too late. The Respondent has reviewed all documents executed at the time of both purchases and everything was signed and acknowledged by the Complainant and there was no evidence that would substantiate any claims of misrepresentation or wrongdoing. The Complainant is not eligible for contract cancellation and the Respondent has declined to cancel the contract.

The rescission period has expired in the contract and the statutory period for the Complainant to bring a civil action on the validity of a contract of purchase and/or a rescission of the contract or damages must be commenced within four (4) years after the date of the contract of purchase pursuant to Tenn. Code Ann. § 66-32-119.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel’s recommendation.**

3. **2020049361**  
**Opened: 7/20/2020**  
**First Licensed: 4/20/1999**  
**Expires: 12/31/2020**  
**Type of License: Time Share Registration**  
**History: None**

Complainant is a South Carolina resident and the Respondent is a Tennessee timeshare registrant and a Florida corporation.

The Complainant booked a vacation through the Respondent in June 2018. The Complainant stayed in a unit with small one bedroom, one bath with a small kitchen. The Complainant had been advised the due to a fire and a rebuilding of a resort, all the units in the category owned by the Complainant had burned and were being rebuilt. During the Complainant’s visit at the resort, the Complainant met a woman who had rented a unit like the Complainant’s usual unit which had been rented through AirBNB. The Respondent had also requested the Complainant attend a meeting for updates to the property and the changes that have occurred because of the fire. During this meeting, the Respondent made a sales presentation for upgrades. The Complainant purchased an upgrade and paid a \$500 down payment with two additional payments to be taken out the following next two months. The Complainant cannot afford these amounts and requests a refund from the Respondent.

The Respondent provided a response and stated the Complainants purchased a timeshare at a resort in Tennessee on June 14, 2018. This complaint has been previously filed with the Respondent and the Tennessee Real Estate Commission. There are no changed facts in the complaint and the Respondent's position is the same as previously set forth in an extensive response. The Complainant purchased a studio and not a one bedroom originally. In June 2018, the Complainant purchased a two-bedroom deluxe unit for annual use. Due the fires, the property was damaged from the fire and the rentals were very limited, but the Respondent made sure that all owners received the best access of the remaining inventory and tried to accommodate all owners. The Respondent even allowed the Complainant to reserve outside of the home resort and waive the exchange fee. Documents are always sent to all owners and in this case, the Respondent has proof of receipt of documents from the Complainants. The Respondent states the contract is valid and enforceable.

The Complainant did not cancel the contract within the contract rescission period. The Complainant can bring judicial proceedings concerning the validity of a contract of purchase and a rescission of the contract or damages within four years after the date of the contract of purchase pursuant to Tenn. Code Ann. § 66-32-119.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**4. 2020050991**

**Opened: 7/27/2020**

**First Licensed: 10/4/2018**

**Expires: 10/3/2022**

**Type of License: Affiliate Broker**

**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker in expired grace period status.

The Complainant alleges the Respondent posted a picture advertising the Respondent's business on Instagram with the caption "Support black businesses. If you are black, your Realtor should be black period. I said what I said."

The Respondent provided a response and acknowledged making the post on Blackout Tuesday, July 7, 2020. The Respondent stated the people want the government to know that people of color matter. The post was made to encourage people to support black-owned businesses because real estate is a business. The Respondent indicates this complaint is personally motivated by the Complainant. The Respondent has removed the post from the Respondent's Instagram feed.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

5. **2020051531**

**Opened: 7/27/2020**

**First Licensed: 5/5/2017**

**Expires: 5/4/2021**

**Type of License: Affiliate Broker**

**History: None**

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant purchased a home on June 12, 2020. The Respondent Owner was the licensed real estate agent. The Respondent represented herself as the designated agent for the sale of the home. During the final walk through, the power had been shut off and the walkthrough was not rescheduled because the closing was occurring on the same day and the movers were scheduled to arrive the following day. The Complainant had not transferred the electrical services for the home. On the following move-in date, the HVAC system froze. The Complainant contacted the Respondent and the Respondent indicated the system had previously frozen when they moved out because all the doors were open all day, however, the Respondent paid for the service call and had the unit fixed. Later, the Complainant was still having problems with the HVAC freezing and the plumbing company found there was significant mold and debris due to poor maintenance, inappropriate metal duct at the base of the unit which warped with mold and moisture, and no drain pan for overflow. It was determined it would be necessary to install a new HVAC unit. The Complainant requested the Respondent help with covering the expense of the HVAC unit and the Respondent refused. The Complainants had to spend \$8,537 for a new unit. Additionally, there was a plumbing issue that arose on June 13, 2020 which was not listed on the property disclosure statement. The repairs were done on June 19, 2020 and the Complainant to spend \$746.00. The Complainant stated the sole issue was the lack of the HVAC disclosure issue.

The Respondent provided a response and gave a complete timeline of the incidents in question. On March 24, 2020, the Complainant's made a written offer on the property and on March 25, 2020, the Respondent accepted the offer. On April 2, 2020, the Property Disclosure form was submitted and on April 4, 2020, the home inspection was completed. The home inspector did not note any issues with the HVAC system and the Complainant's were aware the system had not been checked. The home was properly cooling. The Complainant did not have any additional inspections completed by a HVAC company or any other company. On May 29, 2020, the Respondent began to move items from the home to a new residence and the house doors were open for a most of the day. The following day, the HVAC unit appeared to be frozen and the Respondent turned off the system and turned it back on and the HVAC system appeared to be working properly. Also, in order to ensure there were no issues, the Respondent called a heating and air repair company to check the unit and have the unit evaluated. The heating and air company did not find any issues with the unit on June 1, 2020. There was a small piece of insulation in the unit that was out of place and this possibly could have been the problem and may have contributed to the unit freezing. On June 10, 2020, the Respondents moved out all the large furniture items and the doors were open for several hours from 9 am to 1 pm and it was 91 degrees and the HVAC unit worked properly. The final walk through was performed on June 12, 2020, and the utilities were discontinued. The Complainant had not transferred the utilities on the date of the closing, so they

did not have power and the Complainant still performed the walk through. The parties proceeded to closing and all documents were signed. The Respondent provided all property disclosure statements with updated property disclosures for all items that were repaired per the Complainant's request. Between the April 3, 2020 disclosure and the closing on June 12, 2020, there was no material change to the HVAC system based on the expertise of the HVAC company that evaluated the system before the power had been disconnected. On June 15, 2020, following the closing the Respondent had the HVAC system checked again at the request of the Complainant on their move-in date because the HVAC system had stopped working while they were moving into the home and paid for the service call. There was no issue with the unit. The Respondent suspected it may have been due to the exterior doors and garage door being open. The Respondent was never told there was a design issue with the HVAC. The property was built in the 1940s and third floor rooms were in the original attic space. Each room on the third floor had a limited number of vents and no air returns which was a common home design when the property was built. The Respondent's agent had advised the Complainant not to proceed with the closing until the power had been turned back on, but the Complainants wanted to continue to the closing. The Respondent made sure the HVAC system was in good working order prior to the closing of the property. Also, it appears the Complainant had made an appointment for a service call on June 29, 2020. The Complainants cancelled this appointment and never rescheduled it. The Respondent states there was no material issue with the HVAC unit and the HVAC unit was operating in the same condition at the time the property disclosure update was signed and while the Respondent was living in the property.

The Complainant stated there was an immediate plumbing issue in the house which was noticed when the Complainant moved into the home on June 13, 2020. The issue was in the bathtub only and cost the Complainant \$746.00 to replace. This was not listed on the disclosure statement. The main complaint is with the HVAC system and the Respondent failed to provide full disclosure of the issue with the HVAC and was disclosed after the closing.

This is a contractual dispute between the Buyers and Sellers and the Respondent had no knowledge of HVAC issues with the property and therefore, no disclosures were provided.

**Recommendation: Close.**

**Commission Decision: The Commission voted to send a Letter of Instruction.**

6. **2020051851**  
**Opened: 7/27/2020**  
**First Licensed: 3/7/1989**  
**Expires: 11/25/2020**  
**Type of License: Real Estate Broker**  
**History: None**

The Complainant is a Tennessee resident and the Respondent is a Tennessee licensed Real Estate Broker.

The Complainant entered into a contract to sell a property for \$3.9M and the contract fell through on April 5, 2020 due to the COVID-19 pandemic. The contract was off-market and unadvertised.

In May 2020, the Complainant listed the property through LoopNet and it attracted several potential buyers. The Respondent who was from the same real estate firm, but not involved in the original transaction divulged the previous contract price to the new prospective buyer. As a result, the Buyer was not pleased the listed price was much higher. The Complainant alleges the Respondent disclosed the previous offer amount to the new potential buyer.

The Respondent provided a response and stated the Respondent has been a commercial real estate agent for over 30 years in the Middle Tennessee area and the potential buyer had been the Respondent's client for the past seven years. The Respondent has assisted them with three facility expansions and one relocation. The Respondent stated the client contacted the office in April 2020 after identifying the property during their search for a permanent location and spoke with another broker in the office when it was still under contract and found out the sale price. When the client again reached out to the Respondent and inquired about the property in May 2020, the Respondent checked on the property and found it was still available for sale. The client wanted to see the property and the Respondent found the property was now listed for \$5.2M. The property is a three story 50,000 square foot property which would require retrofitting for the client. While the Complainant may have explained why the price of the property had increased and the market changes, the client decided to make an offer on a smaller one-story property. The Respondent did not disclose the sale price to the Complainant's potential buyer.

There are no violations of the Tennessee Real Estate Broker License Act of 1973 or the Rules and Regulations of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**7. 2020065771**

**Opened: 7/27/2020**

**First Licensed: 2/11/2009**

**Expires: 2/24/2021**

**Type of License: Principal Broker**

**History: 2014 Consent Order**

The Complainant is a California resident and owner of property in Tennessee. The Respondent is a Tennessee licensed Principal Broker.

In April 2019, the Complainant transferred the management of two single-family homes in Middle Tennessee to a property management firm. The former property manager was required to transfer all the records and information to the new property management firm. The new property manager was to acquire authority for any expenditures over \$50 for the properties and this did not always occur. On June 29, 2020, the property management firm indicated pressure washing was needed and the Complainant requested an estimate of the cost. The property manager's maintenance person agreed to provide an estimate and later just charged the \$250 for pressure washing without informing the Respondent of the cost before having the work performed. The Respondent's

maintenance person stated there was a misunderstanding and the vendor just went ahead and did the work without getting authorization to complete the work. There are repeated e-mails from the property manager “bullying” the Complainant about the reasonable prices charged for services and the Complainant should be grateful for the efforts of the Respondent. Whenever the Complainant has requested a call, the Respondent refuses or does not respond. After the Complainant insisted on a call, the Respondent issued a mutual 30-day termination. Finally, after several phone calls, the Respondent issued a refund of the \$250 for the pressure washing. The Respondent has failed to provide all the documents and paperwork for the properties. The Respondent will only provide the leases and the Complainant does not have all the details and information concerning the tenants residing in the properties. Without the Complainant’s knowledge, the Respondent took the application of the tenants and added language indicating the information would only be used by the Respondent and no other individual. The Respondent now states the Complainant has no right to the information and the Complainant has no information or details concerning the individuals residing at the Complainant’s properties. The only information available is the e-mail and cell phone number of one of the tenants. There is no information concerning employment, banking, next of kin or any other details about the tenants. The Complainant alleges the Respondent has violated the fiduciary duty to the Complainant. Additionally, the Respondent has accused the Complainant of harassment and the Complainant has only responded to e-mails that were exchanged between the parties to obtain all the records and information concerning the tenants residing in the properties. The Respondent has also failed to return monies owned and continues to refuse to provide all the records and information to the Complainant.

The Respondent provided a response and stated there was a mistake made by the pressure washing vendor and due to a miscommunication, the vendor performed the pressure washing service prior to the Respondent obtaining the authorization of the Complainant. The Respondent admits to refusing to have a phone call with the Complainant and stated the Respondent would only communicate with the Complainant by e-mail because the Complainant threatened legal action. It has been Company policy not to speak by telephone to any individual that threatens legal action to ensure there is documentation of all conversations in the event there are actual legal proceedings. The Respondent claims the Complainant was terminated not because of the mistake concerning the pressure washing incident, but because during every interaction, the Complainant made racial accusations concerning the tenants residing in the properties owned by the Complainant. Also, the relationship between the Complainant and the Respondent was not a “good fit” and the repeated accusations by the Complainant that the Respondent was not doing a good job because the properties were not visited each month.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel’s recommendation.**

8. **2020051881**  
**Opened: 7/27/2020**  
**First Licensed: 2/11/2009**  
**Expires: 2/24/2021**  
**Type of License: Principal Broker**

## **History: 2014 Consent Order**

The Complainant is a California resident and owner of property in Tennessee. The Respondent is a Tennessee licensed Principal Broker.

In April 2019, the Complainant transferred the management of two single-family homes in Middle Tennessee to a property management firm. The former property owner was to transfer all the records and information to the new property management firm. The new property manager was to acquire authority for any expenditures over \$50 for the properties and this did not always occur. The property manager managed two properties during the period of February 2019 to August 2020. The contract was terminated on August 7, 2020. The Respondent did not return the two security deposit amounts for each of the properties. The Respondent sent checks payable to the tenants. Therefore, these checks are non-negotiable. The Complainant has repeatedly demanded the return of the monies and the Respondent has refused to return the monies payable to the Complainant.

The Respondent provided a response and stated the security deposit will be returned to the tenant when the property has been vacated and these checks were written in the tenant's name and sent directly to the Complainant. The Respondent is willing to reissue the checks but has not received the previous checks in the tenants' names previously sent to the Complainant.

**Recommendation:** Authorize a formal hearing and assess a civil penalty in the amount of \$4,000 for violations of the Tennessee Real Estate Broker License Act of 1973 by the Respondent's failure to account for or to remit any moneys coming into the licensee's possession that belong to others within a reasonable time (Tenn. Code Ann. § 62-13-312(b)(5)); failure to return the security deposit monies to the Complainant and for failure to exercise reasonable skill and care, failure to provide services with honesty and good faith, failure to timely account for trust fund deposits and all other property received from any party to the transaction pursuant to Tenn. Code Ann. § 62-13-403(1), (4), and (6)

**Commission Decision:** The Commission voted to authorize a formal hearing and assess a civil penalty in the amount of \$8, 000.00 for violations of the Tennessee Real Estate Broker License Act of 1973 by the Respondent's failure to account for or to remit any moneys coming into the licensee's possession that belong to others within a reasonable time (Tenn. Code Ann. §62-13-312(b)(5)); failure to return the security deposit monies to the Complainant and for failure to exercise reasonable skill and care, failure to provide services with honesty and good faith, failure to timely account for trust fund deposits and all other property received from any party to the transaction pursuant to Tenn. Code Ann. §62-13-403(1), (4), and (6). The Commission also voted and elected for Respondent to take the Principal Broker CORE class within 180 days of the execution of the Consent Order and for those hours not to count toward Respondent's CE requirement.

9.     **2020052901**  
**Opened: 7/27/2020**  
**First Licensed: 3/22/2007**  
**Expires: 7/26/2020 (EXPIRED GRACE)**  
**Type of License: Principal Broker**  
**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Principal Broker.

The Complainant alleges the Respondent has been soliciting business and offering real estate services. The Respondent is unlicensed and allowing unlicensed persons to solicit business and offer real estate services. The Respondent is also marketing services and offering a standard 6% real estate fee to all potential clients.

The Respondent has not renewed the license and is in expired grace license status.

**Recommendation: Authorize a formal hearing and authorize a civil penalty for \$1,000 for unlicensed real estate activity.**

**Commission Decision: The Commission accepted counsel's recommendation.**

10.    **2020053771**  
**Opened: 7/27/2020**  
**First Licensed: 6/30/2020**  
**Expires:6/29/2022**  
**Type of License: Affiliate Broker**  
**History: None**

This was an anonymous complaint submitted by a Tennessee resident and the Respondent is a Tennessee licensed Affiliate Broker.

The Complainant alleges the Respondent provided a business card and there is no office address noted on the business card.

The Respondent provided a response and stated this was not a business card, this was a new agent card and at the time, the new business card had not been ordered. The new business card has been provided. The Respondent's Principal Broker stated this was an inadvertent error and knows that all agents must have the address listed on the business card.

The business card is not considered advertising. Tenn. Comp. R. & Regs. 1260-02-.12 exempts them from advertising rule as promotional materials.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**11. 2020055081**

**Opened: 7/27/2020**

**First Licensed: 12/9/2004**

**Expires: 8/24/2021**

**Type of License: Affiliate Broker**

**History: None**

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant purchased a property on December 5, 2018. Two days after I moved into the home. The garage started leaking a week later which caused flooding in the bonus room, extra bedroom, and bathroom. The Complainant stated the foundation of the home was sinking. The plumber had to come four times for repairs. As a result, the downstairs bathroom had sewage backup from the upstairs bathroom and the Complainant is still unable to use the downstairs bathroom. The Complainant alleges the Respondent took advantage of the passing of the Complainant's daughter and grieving the loss of her child. After having a contractor come to inspect the house, it was discovered some of the bricks downstairs were also caving in. The water from the outside was make the bricks cave in. The Complainant had to spend \$67,000 to fix the problem. Also, last year the air conditioning stopped working and the Complainant had to spend \$8,736. The roof had to be replaced and the attic had to have insulation installed.

The Respondent provided a response and stated the Complainant purchased the home "AS IS." The home appraisal required that some repairs be completed and those repairs were completed as required under the contract. There were no other known defects with the home and all property disclosures were provided.

Based on a review of the case file, the Respondent exercised reasonable skill care and all disclosures were properly made during the transaction. There are no violations of the Tennessee Real Estate License Act of 1973 or the rules and regulations of the Tennessee Real Estate Commission

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**12. 2020045921**

**Opened: 7/27/2020**

**First Licensed: 11/29/2006**

**Expires: 11/28/2020**

**Type of License: Real Estate Firm**

**History: 2017 Consent Order for lack of due professional care**

The Complainant is an Ohio resident and the Respondent is a Florida corporation and licensed Tennessee Real Estate firm.

The Complainant purchased a timeshare in 2016 and never used the timeshare. The Complainant requests a cancellation of the contract due to the COVID-19 pandemic and the inability to travel in the future.

The Respondent provided a response and stated the same complaint was filed with the Division of Consumer Affairs and a full response was provided. The Respondent states there were no misrepresentation was made to the Complainant and were given all opportunities to cancel the purchase within the time limitations set forth in the contract. There was never an obligation to purchase a timeshare and the Complainant could have cancelled within the cancellation time period. The Respondent never received a cancellation notice from the Complainant and never had any knowledge concerning any issues with the ownership or purchase of the timeshare. The Complainant has defaulted on the mortgage loan due to non-payment of amounts owed under the promissory note signed at the time of purchase. The Owner Beneficiary Rights and membership in the vacation club terminated on December 18, 2019.

The rescission period has expired in the contract and the statutory period for the Complainant to bring a civil action on the validity of a contract of purchase and/or a rescission of the contract or damages must be commenced within four (4) years after the date of the contract of purchase pursuant to Tenn. Code Ann. § 66-32-119.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**13. 2020048441**

**Opened: 7/27/2020**

**First Licensed: 9/29/2009**

**Expires: 9/28/2021**

**Type of License: Real Estate Firm**

**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed real estate firm.

The Complainant purchased a timeshare property in June 2016 from the Respondent. alleges the Respondent mistreats valued customers and deceives individuals into purchasing a timeshare property. The Complainant requests a cancellation of the contract.

The Respondent provided a response and stated the Complainant purchased a timeshare in 2016 and has made multiple visits to the various properties within the Respondent's vacation network. The Complainant also purchase a second timeshare interest in 2017. The Complainant has booked and completed four reservations since 2016. The Respondent stated the Complainant was never "pressured" or forced to purchase any timeshare property and is not obligated to make a purchase. Also, the Respondent does not market the timeshare properties as an investment and does not

market them stating the value will increased. The ownership in the timeshares are deeded property interests and the Complainant was sent the recorded Warranty Deed showing ownership. The ownership can be transferred to the Complainant's heir or beneficiary upon death and to the extent the mortgage obligations are fulfilled at the time of transfer, the transfer will be made free of any clients. However, the annual maintenance fees are related to the land the property is built upon and requires those fees are paid in perpetuity. If the heirs do not wish to succeed to ownership, the property can be disclaimed. All of the details above are clearly explained and all documentation is provided in detail outlining the exact nature of the timeshare ownership and obligations. The Respondent is unable to substantiate any of the Complainant's allegations and there were no misrepresentations made by the Respondent. All proper disclosures were provided to the Complainant at the time of each of the purchases and there are signed acknowledgment documents. It also appears the Complainant has enlisted the assistance of a third-party "consumer advocacy" company to assist with the filing of this complaint based on the similarities of this complaint and other complaints the Respondent has received. On August 29, 2018, a final injunction was obtained against a law firm and principal attorney prohibiting the firm and the attorney from engaging in further timeshare exist services and the Tennessee Board of Professional Responsibility suspended the principal attorney from the practice of law upon a finding that the principal attorney poses a threat of a substantial harm to the public. Based on all of the above, the Respondent has declined to offer the Complainant any contractual relief.

The rescission period has expired in the contract and the statutory period for the Complainant to bring a civil action on the validity of a contract of purchase and/or a rescission of the contract or damages must be commenced within four (4) years after the date of the contract of purchase pursuant to Tenn. Code Ann. § 66-32-119.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**14. 2020051991**

**Opened: 7/27/2020**

**First Licensed: 7/11/1996**

**Expires: 1/23/2021**

**Type of License: Real Estate Firm**

**History: None**

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Real Estate firm.

The Complainant was interested in renting a home through the Respondent and the Respondent's real estate agent failed to advise the Complainant there was another contract pending with another individual. The Respondent's real estate agent had no intention of leasing the home to the Complainant since there was another lessor. The Complainant applied to rent the home on July 6, 2020 and the Complainant did not hear back from the Respondent. The Complainant alleges it is against policy for a real estate agent to broker a home to one person and then entertain the offer to another. The Complainant would like the Respondent's license to be revoked.

The Respondent provided a response and stated the Complainant filed out an application for another property on March 5, 2020 at 12:19 pm and a response advising the Complainant the home was no longer available was sent to the Complainant on March 5, 2020 at 2:50 pm. On July 6, 2020, the Complainant did look at a property at 4:30 pm and was advised there were other individuals also looking at the property and was instructed to submit an application as soon as possible. The Complainant submitted the application at 6:15 pm, however, was denied because of the Complainant's credit score. However, the Complainant also applied for another property and is still eligible for the other property and has not been declined and notified of being declined for the other property.

There are no violations of the Tennessee Real Estate Broker License Act of 1973 or the Rules and Regulations of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**15. 2020054301**

**Opened: 7/27/2020**

**Unlicensed**

**History: None**

Complainant is a Tennessee resident and the Respondent is a real estate investment firm.

The Complainant invested in the Respondent's real estate investment group in June 2019 in a development project and in a second transaction executed a one-year promissory note. The development project was the initial investment used to purchase the property and was a secured loan by the Complainant. Due to the lack of progress, transparency and the current economic conditions, the project was sold at the best possible return, however, it resulted in the least amount of risk for the Complainant. The best return and least risk would involve the sale of the property through the wholesale markets and the Complainant previously agreed such a sale would be best. On July 6, 2020, there were two offers made and signed on July 7, 2020. Another investment partner attempted to null the accepted offer because of misinformation and confusion. Since there were only two offers at the time, the Complainant sent the offer the Complainant had accepted to meet the terms of the signing by July 7, 2020. There was an internal dispute between the parties and this resulted in the use of individual lawyers to correspond between partners. There was no response on July 8, 2020 to null the accepted offer and the Complainant's assigned agent was able to amend the offer to be signed by a closing date. There was a three-day period of no response from any party. On July 10, 2020, one of the partners responded with a new offer under a structure that was not beneficial to the Complainant. The offer expired and the property was relisted. The Complainant alleges the Respondent continues to obstruct the completion of the accepted offer, relisted the property without authority and obstruct the distribution of the Complainant's promissory loan. The Complainant alleges there is a breach of fiduciary duty and unethical behavior.

The Respondent operates as a real estate investment firm and did not provide a response. The Respondent is not subject to the jurisdiction of the Tennessee Real Estate Commission. This is a contractual dispute between the parties.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**16. 2020050331**

**Opened: 7/27/2020**

**First Licensed: 8/8/2006**

**Expires: 8/7/2020**

**Type of License: Vacation Lodging Service Firm**

**History: None**

Complainant is a Florida resident and the Respondent is a licensed Tennessee Vacation Lodging Service Firm.

Complainant rented a cabin from the Respondent during the period of June 13, 2020 to June 18, 2020 and alleges the accommodations were not as the Respondent advertised. The cabin was supposed to have panoramic views of the mountains and a resort style pool. The unit had dirty sheets, limited hot water, and a broken showerhead. The Respondent engaged in false advertising and the Complainant alleges the accommodations were "disgusting." As a result, the Complainant had to book a new cabin during the stay with the Respondent and move to other accommodations from June 14, 2020 to June 18, 2020. The Complainant requested cancellation of the contract and never received a response from the Respondent.

The Respondent provided a response and stated the cancellation or change had to be made within sixty (60) days of scheduled arrival. Any cancellation or change request that comes after sixty (60) days prior to scheduled arrival results in forfeiture of all monies paid. Refunds are not provided for any reason after check-in. Also, the Respondent provided pictures of the views from all angles of the cabin and there are mountain tops surrounding the entire cabin. There is nothing deceptive about the Respondent's advertising. All pictures provided were taken in May 2019. The cabin was accurately depicted. The pool that is mentioned is not near this cabin. All the attractions surround the cabin, however, there is no reference to a pool in any of the Respondent's advertising. When the Complainant reported the shower handle was broken, it was immediately repaired as requested. The shower head was not broken and the unit had been properly cleaned. The hot water was checked and there was plenty of hot water. There was also a courtesy call made to the Complainant upon check-in to check on the guests and the Complainant did not indicate or state any concerns and stated there were no problems. Also, the Complainant made a dispute with the credit card company concerning the charges to the credit card by the Respondent. The credit card company declined the charge back to the credit card after a full investigation.

This is a contractual dispute between the parties and there are no violations of the laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**17. 2020048091**

**Opened: 8/3/2020**

**First Licensed: 3/21/1990**

**Expires: 9/7/2020**

**Type of License: Real Estate Broker**

**History: None**

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Real Estate Broker.

The Complainant was in the process of purchasing a property and made an offer on May 31, 2020. The Seller counteroffered on June 3, 2020. The parties were not able to reach an agreement as of June 5, 2020. The Complainant requested a release and the Seller's agent never responded. Another release was submitted on June 11, 2020 and there was no response from the Respondent. On June 23, 2020, the Complainant's agent submitted another release and never heard back from the Respondent. On August 3, 2020, the Complainant filed a supplemental filing stating all issues had been resolved and withdrew the complaint.

The Respondent provided a response and stated the issue was resolved between the parties. The Buyer and Seller agreed to split the earnest money and funds were released.

**Recommendation: Authorize a contested formal hearing and informal settlement by Consent Order with the payment of a \$1,000 civil penalty for failure to diligently exercise reasonable skill and care in providing services to all parties to the transaction pursuant to Tenn. Code Ann. 62-13-403(1).**

**Commission Decision: The Commission accepted counsel's recommendation, but also opted to have a complaint opened against the Principal Broker.**

**18. 2020051541**

**Opened: 8/3/2020**

**First Licensed: 1/6/2006**

**Expires: 1/5/2022**

**Type of License: Affiliate Broker**

**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant entered into a contract to purchase a home on May 27, 2020. All property disclosures were provided. The Complainant alleges there were two factual misrepresentations made on the form that demonstrate a pattern of misrepresentation by the Sellers and the “dereliction of duty and responsibility” by the Respondent. The home was listed as being under a termite contract, however, the home was not covered by a termite contract. The Respondent negotiated with the Complainant in good faith to resolve the issue and the Complainant was satisfied with the resolution and it seemed to be an innocent error. Following the appraisal, the Complainant learned the home was part of the homeowner’s association (HOA). On the property disclosure form, the Sellers had stated the property was not part of an HOA. Since this issue would possibly cost a significant amount of money and possibly loss of freedom of use of the property, the Complainant attempted to negotiate in good faith to resolve the issue. The Respondent indicated the Sellers were going to cancel the contract because the Complainant was asking for compensation to resolve a mistake that the Sellers were unable to resolve. The Respondent indicated the Complainant was being unreasonable and it was an innocent mistake on the form. Ultimately, the Complainant’s felt pressured to sign an amendment because there had already been quite a bit of money already spent in inspections, appraisals, furniture purchase and a contract for the sale of the Complainant’s home. The Respondent repeatedly attempted to excuse the error throughout the transaction process. The Respondent indicated the Sellers were from Italy and there was a slight language barrier and the Sellers checked the wrong box. The Complainant alleges it was the Respondent’s duty to make sure the document signed by the Seller was correct. The Respondent also repeatedly told the Complainant’s agent, the Complainants should have known it was an HOA because nearly every home in the town belongs to an HOA because every home built is part of a planned development. The Complainant alleges the Respondent knowingly and purposefully allowed a contract to be placed with an incorrect and inaccurate property disclosure. Also, the MLS for the property listed the property as not being included in an HOA. The Complainant alleges the actions of the Respondent were unethical and warrants disciplinary action against the Respondent.

The Respondent has been practicing in the area of real estate for the past 15 years and has never had a complaint filed with the Commission. The Respondent conducts approximately seven closing per month and has been named as a Top Producer for five consecutive years. The Respondent stated the Complainant initially misrepresented that the Complainant was not working with a realtor when attending the open house for the property and the Respondent discussed the listing, market conditions, information about the Complainant’s current home and neighborhood, as well as information about good lenders in the area and the contact information of a local lender that may be able to provide assistance with the purchase of a home. The Complainant also indicated to the Respondent it would not be necessary to sell a home if the Complainant purchased the home listed by the Respondent. The following day, the Respondent received an offer by e-mail from the Complainant’s agent. The offer was negotiated with four counteroffers and a contract was bound. The Sellers moved out of the home and out-of-state to California. The Complainant was easily able to schedule the inspection and move forward to the closing. The Respondent had no further direct contact with the Respondents after the open house and communicated strictly the Complainants real estate agent. The Complainant did not spend thousands of dollars on the appraisal and the inspection. The total was \$1,000 dollars. The termite contract issue had been resolved and the Complainant was able to choose a company of their choosing. The Sellers agreed to cover the complete cost of the termite contract. The Sellers were under the impression the

termite contract was still under the warranty from when the home was originally built and made a mistaken assumption. The Respondent provided the Complainant a copy of the MLS listing during the first encounter during the Open House. The HOA information was listed as clearly mandatory and the Complainant was aware there was a HOA because the listing noted corresponding HOA fees. The Respondent later learned of the errors in the property conditions disclosure form and relayed to the Complainant's agent these were unintentional errors and the Sellers were international clients and it was an oversight about not properly marking the requisite boxes on the form. The Sellers apologized profusely for the errors. The Respondent insists there was never any coercion or intimidation exerted upon the Complainants to proceed with the sale. The Complainants chose to move forward with the contract and could have requested cancellation of the contract. The Complainant was moving from a subdivision with a higher HOA annual dues to a home with lower annual HOA dues and the Complainant did not have a valid claim for loss of use by entering into a contract to purchase a home in a HOA because the contract was entered into voluntarily. The Sellers were always willing to negotiate with the Complainant provided the requests were made in good faith. Also, the Respondent and the Sellers granted the Complainant an extension of time to close because of a financing issue even when the contract was not contingent on the sale of the Complainant's home. The Respondent denies there was any willful misrepresentations made concerning the sale of the home.

The Respondent's Principal Broker also provided a response and stated the complaint is without merit. The allegations are incorrect. The Principal Broker was aware of the issues concerning this transaction and the Respondent never knowingly provided any incomplete or inaccurate information to the Complainant or the Complainant's agent. The Principal Broker indicated the Complainant was very difficult throughout the process and the Respondent acted professionally and in an honest manner. There was no intent to deceive or make any misrepresentations, the issues that occurred were mistakes by the Sellers.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**19. 2020051711**

**Opened: 8/3/2020**

**First Licensed: 10/30/2018**

**Expires: 10/29/2020**

**Type of License: Affiliate Broker**

**History: None**

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent attempted to show the rental property being leased by the Complainant. The Complainant claims the property manager lied to the Complainant about the nature of the visit. The Complainant was told there were insurance inspectors coming to see the property. The Complainant waited inside a vehicle while the showing was conducted. The Complainant asked the Respondent to wear a mask before entering the premises and the

Respondent asked if the Complainant was the owner or a tenant. According to the Complainant, the Respondent spoke to the Complainant in a very condescending tone. The Respondent told the Complainant the individuals with the Respondent were there to view the property because they were interested in purchasing the home. During the showing, the Complainant entered the home while the Respondent was conducting the showing and asked the Respondent to leave because the Complainant did not feel comfortable with the amount of people in the home. At the time, the Complainant was 38 weeks pregnant and very concerned about contracting COVID-19. The Complainant alleges the Respondent left the premises with the potential buyers and stated loudly “[t]hese are the kind of tenants you get rid of, and I can show you how.” The Complainant stated the Respondent mistreated the Complainant and racially discriminated against the Complainant. The Complainant felt violated and humiliated by the Respondent. The Complainant requests the Respondent should be reprimanded.

The Respondent provided a response and stated the property was being sold and the Respondent had some potential buyers to view the home. The Respondent obtained all necessary permissions to show the home from the owner. The Respondent denies any racial discrimination against the Complainant. The Respondent is of mixed ethnicity and the potential buyers were Asian. The Respondent and the potential buyers arrived separately and waited outside looking at the exterior of the home. The Respondent was told the tenant would not be present and Respondent was surprised when the tenant approached the Respondent about the concerns about COVID-19 and entering the home. At the time, the Respondent did not have a mask on when outside but had every intention of wearing a mask once the other potential buyer arrived and the parties entered the home. The Respondent did not pose as an insurance adjuster and did not speak or respond to the tenant in a condescending manner. The directions for entering the premises and conducting the showing were followed. The Respondent never made any statements concerning getting rid of the Complainant as a tenant and for some reason the Complainant has inserted some racial motive upon the Respondent for no reason. The Respondent is married to an African American for the past 18 years and has multi-racial children and racial issues are always on the forefront of the Respondent’s life. The Respondent has a huge distaste for any type of racial discrimination or mistreatment and the Respondent in no way mistreated the Complainant. Also, the Respondent had interactions on the same day with the neighbor at the duplex property who was also African American and it was a very pleasant exchange and the Respondent and potential buyers spoke with the neighbor for quite some time during the showing.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel’s recommendation.**

**20. 2020052721**  
**Opened: 8/3/2020**  
**First Licensed: 11/24/1982**  
**Expires: 9/4/2020**  
**Type of License: Principal Broker**  
**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Principal Broker.

The Complainants purchased a home from the Sellers in March 2018 and allowed the Sellers to remain in the home because the Sellers were not moving soon and did not want the home to remain unoccupied. The Complainant alleges the Respondent, the Seller's agent, did not follow through with the rental agreement with the Seller. The Complainant alleges the Respondent was friends with the Sellers and stated the Respondent allowed the Sellers to take fixtures, valances and draperies from the property during the rental period.

The Respondent provided a response and stated the Buyers of the property originally viewed the property in October 2017. The closing occurred on March 27, 2018 and the Buyers lived out-of-state. The Sellers were in the process of moving out of the home and were planning on living in a motor home while a new home was being built. The Buyers asked the Sellers if they would like to continue to occupy the property, so it would not be empty before the Sellers moved into the home. The Sellers had a motor home and did not want to pay rent to the Buyers. The Buyers would allow the Sellers to stay in the home without paying rent. A temporary occupancy agreement had been drafted and the parties were going to negotiate the term between themselves. The Respondent prepared the draft version of the occupancy agreement prior to the closing. It was not decided until after the closing whether the Sellers would remain on the property. The Buyers did a final walk through before closing and found the property to be in the same or better condition as it was at the time of the offer and contract acceptance. There was no collusion and the Respondent was friendly with the Sellers and does admit to visiting the Sellers home on many occasions as a guest. The Buyers asked for the contract documents when they moved into the home and the Respondent provided them. The Buyers purchased some furniture from the Sellers and Sellers asked the Buyers for payment. At this point, the problems between the parties began and the Sellers sued the Buyers in small claims court for the payment of the furniture. The court found in favor of the Sellers in June 2019 and the Buyers appealed the case and asked for unpaid rent and made several other allegations. The parties again went to court in February 2020. The Respondent was involved in the sale of the property between the two parties and has no knowledge about the Sellers taking any items other than those agreed upon in the Purchase and Sale Agreement and there was never any agreement for the Respondent to collect any rents. The Buyers never asked the Respondent to collect any rents and the occupancy agreement reflected that there was no rent to be collected.

This is a contractual/landlord tenant dispute between the parties of the transaction and the Respondent real estate agent did not violate any of the laws or rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**21. 2020053321**

**Opened: 8/3/2020**

**First Licensed: 4/3/2006**

**Expires: 4/2/2022**

**Type of License: Affiliate Broker**

**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent contacted the Complainant's client without the Complainant's consent and had the client sign a form extending the closing date and giving the Sellers an extra day to move out after the closing. The Complainant had asked the Respondent not to communicate with the Complainant's client, but the Respondent ignored the Complainant's request. The client was not aware the Complainant did not provide the form because the Complainant and the Respondent work in the same office. The Complainant would not have agreed to allow the Sellers to stay an extra day after closing to move out. At this point, the Respondent started to ignore the Complainant and would not communicate with the Complainant by text or phone and only by e-mail. When the Complainant did not respond quickly, the Respondent decided to contact the Buyers directly and got them to sign the form to allow the Sellers to remain in the home for an extra day.

The Respondent provided a response and stated the request for an additional move day was listed in the MLS and the Complainant had no issue with the additional day initially. The Complainant told the Respondent the issue could be worked out. Later, the Complainant refused to agree to the additional day and requested the Complainant ask the client of the property instead of deciding for them. The Buyers had agreed with it and even told the lender that it would not be a problem. The Temporary Occupancy Agreement was sent to all parties to sign and it indicated all parties were aware. The agreement was null and void once the closing date was delayed. The Complainant often refused to return paperwork or draft paperwork and often ignored the Respondent's e-mails, texts and phone calls.

**Recommendation: Authorize a formal contested case hearing and allow for informal settlement by Consent Order and payment of a \$1,000 civil penalty for failure to diligently exercise reasonable skill and care in providing services to all parties to the transaction.**

**Commission Decision: Defer to next Commission meeting and obtain additional information from the Principal Broker.**

**22. 2020053921**

**Opened: 8/3/2020**

**First Licensed: 7/24/2003**

**Expires: 2/14/2022**

**Type of License: Principal Broker**

**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Principal Broker.

The Complainant stated the Respondent failed to adhere to the closing time of 1 pm and failed to move all belongings out of the home for a one-week period. The Complainant also alleges the Respondent failed to patch the 150+ holes inside the home and clean the house. The Respondent

was supposed to send a friend to patch the holes during a period of two weeks and only 80% of holes were patched. The Respondent failed to complete the repair requests contained in the agreement. There was also a surge in the electrical system and the Complainant had to hire a licensed electrician to find and fix the problem. It was discovered the electric panel was not properly grounded. The Respondent failed to reimburse the Complainant \$125 to cover the costs of the electrician. The Complainant also alleges the Respondent failed to fix the bathroom window and sent a friend to temporarily fix the window. The Complainant alleges the Respondent removed the mirror in the bathroom which was tiled to fit the mirror and left a gaping hole in the wall. The vanity lights in the bathroom were left dangling.

The Respondent provided a response and stated the closing was not delayed. The closing occurred at 1 pm on the prescheduled date of the closing as scheduled. The Respondent stated the Buyer's agent stated the Buyers could not move for up two (2) days after the closing and would allow the Buyers a few extra days to pick up some leftover belongings. There were a few items the Buyers failed to remove from a small storage cabinet (curtain rods, TV mount brackets and some other small items). There were also some laundered items left in the dryer by accident. There was never a request to fill the 150+ nail holes and these were not patched prior to closing. The Buyer's agent told the Respondent not to worry about holes because the Buyer was planning to repaint the interior. However, after the closing, the Sellers agreed to have a painting team patch the holes, sanded and ready to be painted. The Buyers even removed the TV mounts and curtains. The Buyer's agent stated the Buyers would have a professional cleaning service come to clean the home. The Sellers were willing to have the house cleaned and usually the requirement for Sellers is to leave a home broom clean. The Buyer was given notice of all completed repairs prior to closing and the final walk through was conducted. There was adequate time for the Buyer to have repairs properly done if there were any problems. The Buyer refused to sign the final Property Condition Disclosure form and stated it would be signed later in case something went wrong. The Buyer has the right to inspect the work and determine if the repairs are done correctly. After the Complainant failed to sign the final Property Condition Disclosure form, later hired a different electrician to inspect the property. The repairs were completed, and payment was made to the Complainant in the amount of \$165.00 on July 17, 2020. According to the Respondent, the check was not cashed for 10 days after the payment was made and the Respondent stopped payment on the check. The window repair is ongoing, there were a few parts on back ordered and it will be installed when received. The Respondent and Sellers will pay for the repairs related to the window. The mirror was removed from over the sink in the main bathroom and this mirror belonged to the deceased Mother of the Respondent and this was explained in the walkthrough. The bath was not tiled for the mirror and the tile work was completed four years prior. The medicine cabinet was older and a light bar was installed and the old electric components did leave a hole. The mirror covered the location perfectly and it was hung as a temporary piece. The Buyer understood that it was merely being placed over the existing mirror/medicine cabinet to cover the hole and was aware the mirror would be removed upon closing. Also, the other matching mirror was hung in a powder room and it also belonged to the Respondent's mother. The mirror hung on one nail and no wall glue or permanent attachments were used. The Respondent was unable to remove the mirror because when the new light bar was added, the light globes was larger than what was there previously, and it would get caught in the mirror's frame. The light bar had to be dismantled to remove the mirror and during the walk through the Respondent left the mirror hanging. The light globes of the light fixture, the mirror and faucet were very tight, and it did not dangle. It was

snuggly wedged behind the faucet and the globe lights. The Respondent was willing to rehang the mirror and repair the window casing, however, the Respondent was unable to make these repairs.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**23. 2020055251**

**Opened: 8/3/2020**

**First Licensed: 11/28/2018**

**Expires: 11/27/2020**

**Type of License: Affiliate Broker**

**History: None**

Complainant is a real estate agent and filed an anonymous complaint. The Respondent is a licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent was working with a Buyer that were only qualified to purchase a home for \$200K or less, however, the Buyers were interested in purchasing a home for a higher price. The Complainant alleges the Respondent advised the Buyers to seek authorization from the lender to get qualified for a larger loan. The Buyers told the Complainant the Respondent was able to get fraudulent pay stubs for them so they could purchase a home at a much higher price. These Buyers successfully purchased a home at a higher price with the help of the Respondent's fraudulent actions.

The Respondent provided a response and denies the allegations made by the Complainant. The Respondent does not engage in such activity and has never provided any fraudulent activity or falsified any pay stubs for any clients or any individual. The Respondent has helped some clients only organize financial documents and other paperwork for submission to a lender. The Respondent has facilitated helping clients set up the meetings with lenders and assist in helping organize all financial documents are in order for lenders, however, the lenders ultimately determine the financing and make all the necessary authorizations. The Respondent does not have any ability to fabricate financial documents or approve loans. The Respondent is not involved in the financial process and has no control over the amounts approved or the processing of any home loans by any lender.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**24. 2020055411**

**Opened: 8/3/2020**

**First Licensed: 2/17/2011**

**Expires: 3/12/2022**

**Type of License: Principal Broker**

**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent and the Respondent's affiliate brokers continuously take advantage of the military population in the area. Many military families buy homes sight unseen, and this often creates future problems. Recently, a property listed by the Respondent and stated there were "walking and biking trails, lake with pavilion, gazebos and playground." However, the Complainant stated none of these amenities existed in the planned development. This is a false representation by the Respondent and the Respondent tricks people into moving into a development for the extra amenities that do not exist.

The Respondent provided a response and stated the information in the listing was not false representation. The information was from the developer's website. The items listed are all slated to be planned for the area as more homes are built to offset the costs to construct the amenities and to maintain them with future HOA dues. The Respondent resides in the development in question and spoke with the Complainant prior to the filing of the complaint. The Respondent indicated the Complainant apologized for filing the complaint against a neighbor and real estate agent, however, was very frustrated the developer was taking so long to add the amenities that were promised. The Complainant told the Respondent the complaint would be withdrawn.

The Respondent has not violated any of the laws or rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**25. 2020056331**

**Opened: 8/3/2020**

**First Licensed: 4/21/2003**

**Expires: 7/5/2022**

**Type of License: Principal Broker**

**History: None**

The Complainant is an anonymous Tennessee resident and the Respondent is a licensed Tennessee Principal Broker.

The Complainant stated the property shows the home is a five (5) bedroom home, however, the home's septic system can only accommodate a three (3) bedroom home. A potential buyer would not have knowledge of this fact unless the buyer's agent told a potential buyer. The price reflects a five (5) bedroom home based on the comparables. The price and number of bedrooms of the home is misleading to potential buyers.

The Respondent provided a response and stated in rural areas, there are often many buyers that want to know if there are other rooms outside of the septic system certification that can be used

for bedrooms. The information provided by the Respondent makes it easily searchable for those looking for the number of rooms actually in a home. The information is also important to a buyer's agent and often there are details included in the remarks section of a listing. There are often several listings with COVID-19 information listed in the private remarks or even what appliances or fixtures will or will not be remaining with the home. There is also information on disclosures that are either attached to the MLS a buyer cannot access and the buyer's agent is always aware of the exact property details. The Respondent did not understand why the Complainant did not contact the Respondent directly. The Respondent indicated the Complainant has misled the public by not using the proper name in listings, etc. Also, the Respondent checked on several of the Complainant's MLS listings and there was a home on a city sewer system, however, in the private remarks section, the Complainant stated the home was on a septic system and the home was being sold "AS IS." This is misleading to the general public. Also, there was another home listed by the Complainant where in the MLS listing it stated the storage building would remain with the home, however, in the private remarks section it states the storage building would not remain with the home. This is also misleading. Also, the price on the home listed by the Respondent is not based on the five (5) bedrooms, the home was priced on the square footage of the home. The home was not misrepresented as the Complainant alleges and if there was an issue with the listing the Complainant could have easily contacted the Respondent by the telephone to further discuss or seek clarification.

**Recommendation:** Authorize a formal contested case against the Respondent with informal settlement by Consent Order and payment of \$1,000 civil penalty for making substantial and willful misrepresentations in violation of Tenn. Code Ann. § 62-13-312(1).

**Commission Decision:** The Commission accepted counsel's recommendation.

26. 2020042881

**Opened:** 8/3/2020

**Unlicensed**

**History:** None

Complainant is a California resident and the Respondent is an unlicensed real estate firm.

The Complainant alleges the Respondent contacted the Complainant to sell a timeshare in Mexico and stated a purchase offer would be received for \$26,000. The Complainant made a wire transfer for 10% of the purchase price - \$2,600. This would be refunded at the time of closing. In April 2020, the Complainant made another wire transfer for \$2,250 through the Respondent. The Complainant was unable to sell the timeshare and never received the return of \$4,850 sent to the Respondent. The Complainant alleges the Respondent is engaged in fraudulent activity.

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**Recommendation:** Authorize a formal contested case proceeding and assess a \$1,000 civil penalty for operating as an unlicensed real estate firm.

**Commission Decision:** The Commission accepted counsel's recommendation.

**27. 2020046741**

**Opened: 8/3/2020**

**First Licensed: 3/10/1994**

**Expires: 12/10/2020**

**Type of License: Real Estate Firm**

**History: 2017 Consent Order**

Complainant is an Ohio resident and the Respondent is a licensed Tennessee Real Estate firm.

The Complainant requests a cancellation of the contract and a full refund of the timeshare property purchased in October 2015 due to the COVID-19 pandemic.

The Respondent provided a response and stated the rescission period has expired and the Respondent declines to cancel the contract.

The rescission period has expired in the contract and the statutory period for the Complainant to bring a civil action on the validity of a contract of purchase and/or a rescission of the contract or damages must be commenced within four (4) years after the date of the contract of purchase pursuant to Tenn. Code Ann. § 66-32-119 has expired.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**28. 2020056561**

**Opened: 8/3/2020**

**First Licensed: 3/10/1994**

**Expires: 12/10/2020**

**Type of License: Real Estate Firm**

**History: 2017 Consent Order**

Complainant is a Florida licensed law firm filing a complaint on behalf of a client who is a Nebraska resident. The Respondent is a licensed Tennessee real estate firm.

The Complainant has been retained by an individual that purchased a timeshare property from the Respondent. The Complainant is requesting a termination of the timeshare obligation on behalf of the client because the client does not use the timeshare because it must be booked two to three years in advance. The Complainant alleges the client was not treated fairly by the Respondent and was instructed to spend more money to upgrade to use the timeshare. The Complainant's client cannot afford to make any further payments on the timeshare property and suffers from health issues. As a result of the financial stress, the Complainant's client has missed some payments on the timeshare and this has been reported to the credit bureau. The Complainant also requests the Respondent cease all reports to the credit bureaus.

The Respondent provided a response and stated the timeshare was purchased by the Complainant's client in 2010 in Missouri. There is no nexus with the State of Tennessee and the consumer is not a Tennessee resident, the transaction did not occur in Tennessee, the property purchased is not located in Tennessee.

Tennessee does not have jurisdiction in this complaint.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**29. 2020045701**

**Opened: 8/3/2020**

**Unlicensed**

**History: None**

Complainant is a Tennessee resident and the Respondent is a Tennessee resident.

The Complainant stated a room was rented from the Respondent at an apartment complex and the management office is unlicensed. The Respondent is signing and revising contracts, showing apartments and managing real estate.

The Respondent did not provide a response.

The Respondent is corporation and falls under the exemption for licensure (Tenn. Code Ann. 62-13-104(a)(1)(E)). The Respondent operates leasing apartments and Tennessee Real Estate Broker Act of 1973 does not required apartment complexes or leasing agents to be licensed as a real estate firm or real estate agent.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**30. 2020060701**

**Opened: 9/22/2020**

**First Licensed: 4/25/2018**

**Expires: 4/24/2022**

**Type of License: Affiliate Broker**

**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent was dishonest and engaged in questionable conduct. The Complainant did not provide any further details and a request was made for more specific information.

The Respondent provided a response and provided a detailed response. The matter stemmed from the Respondent's representation of the Complainant in the purchase of a property. Another affiliate broker had assisted the Complainant who went on maternity leave and had requested the Respondent assist the Complainant. The Respondent attempted to contact the Complainant on numerous occasions at the direction of the other affiliate broker and finally reached the Complainant on December 19, 2020. The Complainant expressed interest in a property the Complainant had found on the MLS. The Complainant was prepared to move forward with an offer. The Respondent found out shortly thereafter there had been a cash offer submitted without contingencies. The Respondent pulled the stats on the property. The Respondent immediately contacted the Complainant and discussed the exact details of the purchase. The Complainant wanted to live on one side of the property, perform light renovations and raise rents, then repeat. The biggest concern for the Complainant was that the rental income should cover all operating expenses and debt service, while finding a premium location that possessed appreciation potential. The Complainant would be able to build equity from the investment, but also receive additional funds from renting the other unit. The rentals in the area were \$900-950 per month and this was a value-added opportunity for the Complainant at a price point the Complainant could afford. The Complainant was aware that while living in one of the units on the property it would result in the Complainant paying some of the monthly mortgage liability. The Respondent explained the process in detail to the Complainant and the Respondent worked with the Complainant to formulate an offer. The offer was bound the next day on December 20, 2019 and an inspector was sent to the property the following Monday after the landlord notified the current tenants residing in the property. Following the inspection, the Complainant was informed that it might be necessary to obtain some contractors to address any issues arising in the inspection report. The Respondent's client was not willing to spend money on service charges. The Complainant was aware the rental for each unit would be \$950 plus utilities, there was a 5% vacancy in the area, there was a 5% CapEx expenditure given the age of the home this was bumped up from a traditional 3%. The property taxes were approximately \$2,434 and the insurance cost would be \$754. The numbers presented to the Complainant were not misleading and the rent comps backed up the projections provided by the Respondent. The purchase price of the property was \$275,000 and the client was comfortable making an offer. The Respondent pushed for a 21-day due diligence, but the Sellers pushed back and gave an additional four days for the inspection period. There were 14 days plus the additional 3 days following to resolve any issues. None of the appraisal, financing and inspection contingencies were waived and the parties intended to close within 30 days. The Complainant was fully prepared and budgeted closing costs with the knowledge there was a pending cash offer. There was nothing dishonest in the contract and it allowed the Complainant to win the offer. The Seller later countered with half the closing costs. After the offer was submitted to the Seller, the Complainant asked if there was anything else that could be done. The Complainant also wanted to provide the real estate that showed the property some sort of compensation. The Respondent indicated a showing fee could be given to the real estate agent, but legally the real estate agent that showed the property had no right to any compensation because the real estate agent was aware the Complainant was already being represented. The Respondent did ask the real estate agent to submit a proposal of what was fair and reasonable, and the real estate agent stated half of the commission. The Respondent did not believe this was a fair amount as the real estate agent only showed the property and did nothing else during the transaction. The Respondent contacted the real estate agent to further discuss and the real estate agent berated the

Respondent concerning the ethics and morality of not splitting the whole commission with someone who legally had no way of being paid. After several calls and rude texts, the Respondent did not believe it was appropriate for this real estate agent to receive any sum for the initial showing. The Respondent did not act in a misleading or intentionally harmful manner. The client wanted to move forward based on the information provided. It was ultimately the decision of the Complainant to move forward with the transaction. The Respondent was not the final decision maker and merely provided the information for the Complainant to make an informed decision.

Complainant did not provide any further information upon follow-up being sent concerning this matter.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**31. 2020065061**

**Opened: 9/28/2020**

**First Licensed: 7/31/2012**

**Expires: 7/30/2022**

**Type of License: Affiliate Broker**

**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant retained the Respondent for the sale of her late-Mother's home. The Respondent assured the Complainant and the Co-Executor of the estate, it was very likely the Respondent would be able to find a cash buyer to pay the \$150K purchase price. In January 2020, the Respondent contacted the Complainant and stated the carpets needed to be pulled up in order to show the hardwood floors in the home. The Complainant had been waiting for the Respondent to advise of things that needed to be done to the home to get it ready for showings. The Complainant removed all the carpeting from five rooms. In the middle of January 2020, the Respondent contacted the Complainant concerning taking professional photographs of the home. The Complainant saw the e-mail message two days after it was sent. During the process of removing the carpeting, the Complainant discovered termite damage and had to remove a few hardwood planks. The Respondent told the Complainant to leave the floors as is because it will show any buyer that any termite damage is not being hidden. An exterminator provided a quote of \$1,200 to treat the termites. The Respondent told the Complainant to allow the Buyer treat for termites because the Buyer could select the company. In March 2020, the Respondent asked the Complainant to cover the half the cost of the termite treatment and the Complainant did not have the money to pay the amount. Once the house was listed, there were two offers. One was an investor making a cash offer and the other offer needed to obtain financing. The Complainant went to sign the paperwork and the Respondent advised it would be best to go with the cash offer and if it did not work out the other offer may still be available. During the process of the sale, there was

an issue with the Probate Court concerning the estate and the Complainant had to delay the transaction because a motion had to be filed to sell the property. The Respondent kept exerting pressure on the Complainant to sign the necessary documents. As a result, the Complainant lost both offers and the co-executor blames the Complainant for not handling the transaction properly. The Complainant alleges the Respondent began to become hostile and pushy concerning any offers and began to act unprofessionally. The Respondent would cancel showings through the showing app and later claim the Complainant had instructed the Respondent to take such action. The Complainant stated the Respondent contacted the Complainant about a showing for a gentleman with a handicapped daughter and what offer the Complainant would accept. As a result, the Complainant dropped the asking price and received an offer from a couple that had to apply for a FHA loan. The Buyer's broker was the only one willing to help the Complainant and answer the Complainant's questions concerning the loan and selling process. The Respondent was not willing to answer questions and would just demand the Complainant sign the documents without explanation or allowing the Complainant to look over documents. The Complainant also felt the Respondent was ignoring her because when she would ask the Respondent about a showing, the Respondent would send a picture of a computer screen and state the Respondent was attending a class. The Complainant felt belittled because at the time the Complainant was not working. The Complainant alleges the Respondent reduced the purchase price of the home by \$5,000 without explanation. Also, the Respondent would leave the water on and run up the water bill the Complainant was paying. The Respondent also gave the washer and dryer to the potential buyers. The Complainant alleges the Respondent snuck a home inspection agreement into the contract and the Respondent acted like the Respondent was the owner of the property and its contents. The Complainant alleges the potential Buyer's agent came driving past the house slowly and when the Complainant went to speak to the buyer's agent, the agent sped off. The Complainant alleges the Buyer's agent was spying on the Complainant.

The Respondent provided a response and represented the Complainant and brother in the sale of a property which belong to their late mother and part of their mother's estate. At the time, the Complainant lived in the property and as a result the property had to be probated before it could be sold. The Respondent attended the probate hearing and the Respondent provided the Judge with comparable sales and was instructed by the Judge to list the property on behalf of the Complainant and the brother. The Respondent has always been in communication with the Respondent and it was decided by all concerned the property would be listed "AS IS." The Respondent did suggest the carpets be pulled up to reveal the hardwood floors. After the Probate Court issued the Order, the listing agreement was signed on January 29, 2020 for \$169,500. There were two offers: one cash offer however, it was contingent upon the Buyer's satisfaction with all inspections, including but not limited to home inspection, termite, appraisal and final inspection. The second offer was a little higher than the listing but required financing. Both offers were presented to the Sellers. The second offer was pulled by the Buyer on January 31<sup>st</sup>. There was a counteroffer and it still had not been signed by the Complainant and the Respondent explained to the Complainant it was necessary to sign certain documents within a timely manner. The Complainant was very uncooperative on many occasions and finally on February 4, 2020, the Complainant agreed to come to the office to sign documents. The contract was cancelled because it failed the Buyer's inspection contingency because there were too many electrical issues with the property. The listing price for the home was later reduced and another offer was received for \$160,000 with a financing contingency. The Sellers made a counteroffer which specified no home

warranty would be provided, and the refrigerator would not remain with the property. The counteroffer was accepted by the Buyers. The listing agreement had expired on March 15, 2020, however, the transaction was still pending, so the Respondent continued to represent the Sellers. The property did pass the FHA inspection; however, the Buyers were unable to obtain financing and a Mutual Release of Purchase and Sale Agreement and Disbursement of Earnest Money/Trust Money on April 29, 2020. The Complainant's brother wished to execute a new listing agreement with the Respondent, however, the Complainant refused. The Respondent advised the Complainant it was not necessary to invest unnecessary funds in the property because the property was being listed "AS IS." The Respondent did want to take photographs of the property and never stated she did not want this done. The text exchange was related to pulling the carpets earlier than the Respondent had requested. It had nothing to do with photographs. The Respondent did not want the Complainant to be out any out-of-pocket for treating the termites if treatment was required and it would be handling during the sale process. The termite inspection was conducted, and the Respondent paid for the service. The Respondent asked for reimbursement and the Complainant was unable to pay so the Complainant's brother paid for the treatment in full. The Respondent never advised to select the cash offer. The Respondent presented both offers to the Complainant and the brother for consideration. The Respondent never told the Complainant not to retain an attorney. The Respondent knew the Complainant and the brother already had an attorney and the attorney was assisting both the Complainant and the brother related to the estate and disposition of the property. The Respondent never offered any appliances or a home protection warranty to any buyers. The initial buyers included the items and the final Buyers requested the items remain with the property in the offer to the Sellers. The Complainant and the brother counteroffered and stated the home warrant would not be provided and the refrigerator would not stay. The washer and dryer were to stay with the property and were not addressed by the Complainant or the brother. The Respondent did not pressure the Complainant and the Respondent always explained the documents every time the Complainant came to the Respondent's office to sign the documents. The Respondent explained repeatedly to the Complainant the importance of having documents signed and signed in a timely manner and it could affect the transaction if the documents were not signed. The Respondent never pressured into signing any documents and was always given ample opportunity to review any documents which required a signature. The Respondent was always professional and worked on behalf of the interests of the clients throughout the transaction. The Complainant often communicated with the attorney for the estate, as well as the attorney that was later hired by the Complainant. After an offer was received, the Respondent told the Complainant the others with pending showings should be told there was an offer and pending showings should be cancelled because of the pending cash offer. The Respondent always explained the process to the Complainant and fully discussed the FHA loan process and even sent a link for FHA eligibility requirements for homes to meet eligibility and provides all the guidance for a home to pass an FHA inspection. The Respondent never threatened any legal action against the Respondent and the \$5,000 reduction in price was in lieu of repairs that was offered.

The Respondent has not violated any laws or rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**32. 2020047291**

**Opened: 8/3/2020**

**First Licensed: N/A**

**Expires: N/A**

**Type of License: Time Share Registration – Time Share Exempt**

**History: None**

The Complainant is a Tennessee resident and the Respondent is a Florida corporation and holds a Time Share Registration.

The Complainant purchased a timeshare from the Respondent on June 18, 2018. The Complainant alleges time share ownership is useless and it has not been worth it. The process to reserve is difficult and a hassle. Booking a vacation was not smooth and the Complaint was promised it would be a smooth and easy process. The Complainant alleges the timeshare salespeople lied to the Complainants and told them there would be unlimited availability, first preference to properties, there would be no problems with booking and there would be enough points to accommodate all the Complainant's needs for booking a vacation with the Respondent. The Complainant alleges the Respondent is unethical and unfair to individuals. The Complainant stated the Respondent is only interested in making money and is dishonest. The Complainant alleges the Respondent lied, misled and used the Complainant. The Complainant was never able to use the timeshare. The Complainant never had enough points to book a vacation anywhere. The Complainant requests the Respondent release the Complainant from the contract.

The Respondent provided a response and stated the Complainants used the timeshare every year. There was no pressure to purchase and the Respondent never stated the maintenance fees could be locked in. This was also disclosed at the time of purchase. The Complainants were advised of all financial obligations and their right to rescind at the time of the purchase. The Respondent are delinquent on the loan and if there are experiencing financial hardship, the Complainants can access loss mitigation and the account will be reviewed for hardship repayment options. There is nothing in the complaint that would warrant a cancellation by the Respondent.

The rescission period has expired in the contract and the statutory period for the Complainant to bring a civil action on the validity of a contract of purchase and/or a rescission of the contract or damages must be commenced within four (4) years after the date of the contract of purchase pursuant to Tenn. Code Ann. § 66-32-119.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**33. 2020051821**

**Opened: 8/3/2020**

**First Licensed: 4/20/1999**

**Expires: 12/31/2020**

**Type of License: Time Share Registration**

**History: None**

Complainant is a Florida resident and timeshare purchaser and the Respondent is a Florida corporation with a Tennessee Time Share Registration.

The Complainant purchased a timeshare in 2016 for \$15,900 after taking a tour at the resort located in Tennessee. The purchase was financed through the timeshare company. The Complainant stayed at the resort in May 2017. The Complainant was able to reserve a week in 2018. The Complainant purchased another week and could book without any upcharge. In May 2019, the Complainant booked the room for July and had to pay a \$500 upcharge because it was not within the 30-day window. The Complainant decided to wait and not book the room. When the Complainant was 28 days from the date of the booking, the Complainant booked the room for the week. The Complainant had to attend timeshare meetings again and ended up with a loan for the timeshare at a 17.9% interest rate. The Complainant alleges the Respondent made false promises to the Complainant and the Complainant has been unable to book a vacation since April 2018.

The Respondent provided a response and stated the Complainants did not have to stay for the entire length of any presentation and if the Complainants felt any pressure or uncomfortable, the Complainants could have left the meetings. The Complainants were under no obligation to purchase a timeshare. The Respondent encourages owners to attend the Owner Update Meetings, but the meetings are voluntary, and the Complainant was not obligated to attend or to upgrade ownership. The Respondent's record shows the Complainant was never denied availability and used the timeshare in April 2018. The Respondent stated there should not have been any misunderstanding because the Respondent always provides an Acknowledgment of Representations document to all timeshare purchasers and it has very detailed information concerning what is presented. The timeshare is purchased for personal use and there are not any representations made about investment or resale potential. The Complainant purchased a Value Season Week of a 1-Bedroom Deluxe Villa for use annually with the first occupancy in 2019. There was a requirement that if dates were booked outside of the deeded season requires an upgrade fee of \$500 which would have been an upgrade from a Value Season Week to an All Season Week. The Value and All Season designations were all discussed with the Complainant at the time of the purchase. The Value Season weeks can be booked up to 24 hours to 11 months in advance and All Season Weeks can be booked 30 days or less. The Respondent indicated the Complainant was trying to upgrade the unit during the stay. Room upgrades would also incur an additional fee regardless of the timeframe. The maintenance and tax assessments are always estimated and it is clearly set forth in the original contract and the Acknowledgment of Representations. The maintenance assessment is the only source of revenue available to pay the cost of maintaining the resort. The Owner's Association is responsible for calculating the resort's annual budget and dividing it equitably among all owners so that each owner pays the fair share of the costs needed to preserve the integrity of the resort's services. The cost of goods and services does increase each year; however, the Respondent tries to keep the costs as low as possible. All disclosures concerning the timeshare were provided to the Complainant. The Complainant's period of rescission has expired, and the Respondent is unable to cancel the timeshare contract.

The rescission period has expired in the contract and the statutory period for the Complainant to bring a civil action on the validity of a contract of purchase and/or a rescission of the contract or

damages must be commenced within four (4) years after the date of the contract of purchase pursuant to Tenn. Code Ann. § 66-32-119.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**34. 2020050961**

**Opened: 8/3/2020**

**First Licensed: 6/30/2016**

**Expires: 6/29/2022**

**Type of License: Vacation Lodging Service – Expired Grace**

**History: 2018 Agreed Order**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Vacation Lodging Service.

The Complainant purchased a vacation property and allowed the Respondent to manage the property beginning on October 25, 2017. The parties entered into an agreement for 80%/20% fee split. The Respondent was responsible for advertising, managing and booking the properties, collecting and filing sales tax. The Complainant was responsible for cleaning and maintenance. On two occasions the Complainant was at the property and had discussed with some guests the amounts that were being paid to rent the property. After looking at the invoices, the amounts did not match the amounts that were listed in the bookings. The amounts ended up being 65/25% split. The Complainant contacted the Respondent and requested the Respondent provide the Complainant with all paperwork for every booking for the past three months. The Complainant had to wait three months for the information. The Complainant filed a civil lawsuit in small claims and was advised the court did not have jurisdiction because of the agreement entered into by the Respondent. The Complainant alleges the Respondent should be held accountable for the misrepresentations made by the Respondent.

The Respondent provided a response and stated the Respondent managed three properties either owned or co-owned by the Complainant. Each contract provided the property manager would receive 20% of the rental amount as compensation and the Respondent also had the right to charge and retain guest fee for various items. The Complainant has misunderstood the terms of the contract. The Complainant was paid the difference between the rent paid by the guest and the total amount paid by the guest. This was repeatedly explained to the Complainant. The Respondent has been in contact with the Complainant's attorney and explained the details. This matter arose more than one year ago. The Respondent provided copies of all documents for review.

This is a contractual dispute between the parties concerning the terms of the agreement and the fees due to the Respondent.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**35. 2020055641**

**Opened: 8/3/2020**

**First Licensed: 9/3/2004**

**Expires: 12/31/2020**

**Type of License: Vacation Lodging Service**

**History: None**

Complainant is an Illinois resident and the Respondent is a licensed Vacation Lodging Service.

The Complainant alleges the Respondent cancelled the Complainant's booking with the Respondent and rented the cabin to another individual. The Complainant could not stay at the cabin during the original dates and the Respondent would not provide a refund. The Respondent was originally paid to hold the cabin for the Complainant, but due to the COVID-19 pandemic and the mandatory stay-at-home orders, the Complainant was unable to visit the resort. The Respondents agreed to cancel and agreed to issue a full refund but later refused to issue the refund and stated the Complainant would be provided one year to rebook. The Complainant alleges the Respondent is engaged in fraud because when the customer tries to rebook, there are no cabin rentals available during the next 12-month period. The Complaint alleges these are deceptive practices and the Respondent is stealing from consumers.

The Respondent provided a response and stated the Complainant booked under a different name. The Complainant agreed to the Respondent's policies and had a vacation stay booked with the Respondent for July 26, 2020 which was booked on July 6, 2020. On July 17, 2020, the Complainant contacted the Respondent to cancel and were told about being issued a travel credit for one year as a courtesy if there was a cancellation. On July 17, 2020, the Complainant called to cancel and agreed to the rebooking policy. The Respondent does not have a cancellation policy and the vacation guarantee provided is 7% plus tax of the total reservation and this allows the Complainant to receive a full refund less the cost of the guarantee up to 30 days prior to the arrival for a one to four bedroom cabin and 60 days prior to arrival for a 5 bedroom or larger cabin. This vacation guarantee would have allowed the Complainant to reschedule the stay and this vacation guarantee is an optional charge. As a courtesy, the Respondent provided the Complainant with rebooking for up to one year.

The Complainant did not agree to any policy. Also, the Complainant let the Respondent know that because of the COVID-19 pandemic upon return to Illinois, the Complainant would have a mandatory quarantine for 14 days and this was the reason for the cancellation.

This is a contractual dispute between the parties and the Respondent has not violated the laws or rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**36. 2020049931**

**Opened: 8/10/2020**

**First Licensed: 12/11/2002**

**Expires: 12/13/2020**  
**Type of License: Principal Broker**  
**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Principal Broker.

The Complainant alleges the Respondent took \$2,500 in earnest money. The Complainant is a 70-year old woman who was trying to purchase a home and the Respondent took the Complainant's money. The home never passed the inspections. The Complainant's agent went to the Respondent's office to obtain the return of the money in March 2020.

The Respondent provided a response and stated the Complainant was under contract to purchase a property and the earnest money was delivered to the listing agent and the balance was delivered to the Complainant. The builder of the home was difficult and slow on making the necessary repairs. The Complainant was receiving grant money from the housing fund and the grant was not approved prior to the closing date and the parties requested an extension. The builder was not willing to do an extension. The listing agent was sent the earnest money release form with the loan denial letter. The builder refused to release or return the earnest money and had an attorney send a demand letter. The Complainant was only to be responsible to \$25.00 according to the attorney. The builder wanted \$10,000 due to a breach of contract or to keep the \$2,500. The Respondent contacted an attorney and the attorney advised the Complainant should contact the attorney directly to help get those funds back from the listing agent and the broker was asking for the builder's direct contact information to help get these funds returned. The broker did not work with the builder directly and stated the attorney had to contact the builder because the builder was holding the earnest money. The builder had done this because the listing agent stated it was the last transaction the listing agent would handle for this builder. The Respondent was not able to take any other action for the Complainant and the Complainant needed to retain the services of an attorney.

The earnest money is being held by the builder and this is a contractual dispute between the Complainant and the builder. The Respondent has not violated the laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**37. 2020052871**  
**Opened: 8/10/2020**  
**First Licensed: 3/6/2000**  
**Expires: 8/14/2022**  
**Type of License: Principal Broker**  
**History: 2010 Letter of Instruction**

This complaint was administratively opened after an anonymous complaint was submitted to Tennessee Real Estate Commission office. The Respondent is a licensed Tennessee Principal Broker.

The complaint alleges unlicensed activity by various individuals hired by the Respondent. The Complainant indicated individuals who had tested with PSI and passed were working without obtaining full licensure and the Respondent told the Complainant the Tennessee Real Estate Commission had given all applicants special permission. Specifically, those that had tested and passed the Time Share Salesperson exam were permitted to begin working.

Upon full investigation and site visits by the Investigations Division of the Department, all licenses were properly obtained and there was not any unlicensed time share salespersons working under the supervision of the Respondent.

The Respondent has not violated any laws or rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**38. 2020054101**

**Opened: 8/10/2020**

**First Licensed: 7/14/2006**

**Expires: 7/13/2022**

**Type of License: Affiliate Broker**

**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent was the broker responsible for performing a Broker Price Opinion (BPO) for a Private Mortgage Insurance (PMI) removal request from the Complainant's lender. The Respondent provided short notice and the Complainant was unable to drop everything and meet the Respondent in a short window of time. The Complainant met the Respondent on March 10, 2020 and the Respondent only spent 5-10 minutes in the home. The Respondent asked a few questions and took some photos. The Respondent stated the information would be submitted to the lender. After one month had passed, the Complainant had not received any report from the lender and the Complainant finally received a copy of the report on May 14, 2020. In the BPO, the Respondent undervalued the property.

The Respondent provided a response and stated the Complainant was contacted at 9:15 am. The Respondent is required to schedule the inspection within 24-hours of receiving the assignment. The Respondent wanted to make sure that all communications with the Complainant were done during normal business hours, however, the Complainants were only able to meet at the home between the hours of 5:30 pm and 6 pm. The Respondent met the Complainant on the evening of

March 10, 2020 and spent 15 minutes taking multiple pictures of each room in the interior and approximately five minutes walking around the exterior of the home taking pictures of the exterior of the home. The Respondent took the pictures with a Nikon Coolpix S9700 camera. Also, the Respondent was not paid by the Complainant. This was a third-party evaluation service and the Respondent was independently contracted. The Respondent was unable to provide a copy of the report and the mortgage provider would provide a copy to the Complainant. The Respondent verified the square footage using multiple sources, such public records and prior MLS data and a visual inspection of the property. Several of the improvements were actually items that were ongoing maintenance items and repairs that do not increase the resale value of a home. The report was a Comparative Market Analysis and not a Uniform Appraisal. The purpose of the Respondent's report is to provide an opinion as to what the estimated sale price would be for the home in its current market. The Respondent also reviewed additional comparables that the Respondent assumed were sent from the Complainant. The Respondent did revise the square footage of the home and the bedroom number. However, a couple of the comps had inground swimming pools, high end bathrooms and kitchen finishes and the Complainant's home lacked these features. The Respondent did not misrepresent the property.

The Respondent has not violated any laws or rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**39. 2020055271**

**Opened: 8/10/2020**

**First Licensed: 3/5/1986**

**Expires: 11/18/2021**

**Type of License: Affiliate Broker**

**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant had listed the property on the market with a different real estate agent from March 11, 2020 to June 23, 2020. After removing the listing, three weeks later the real estate agent contacted the Complainant and stated that the Respondent had contacted the Complainant and stated someone had seen the home when it was listed and wanted to purchase the home. The Complainant had planned on doing some repairs and replacing the windows in the sunroom; however, the potential buyer was interested in having the price reduced for those items and purchasing the home "AS IS." After the Complainant discussed this with the real estate agent, the Complainant agreed to look at an offer. The home was originally on the market for \$259 and the Respondent's potential Buyer offered \$240K. The Complainant countered with \$250K and stated the home would be sold "AS IS." The counteroffer was accepted "AS IS." Thereafter, there was a problem with the Buyer's mortgage and an inspection was ordered. On July 21, 2020, the Respondent's Buyer came back with another offer with all sorts of improvements that needed to be done and the "AS IS" offer was reduced to \$237,500. The Respondent's Buyer wanted all the

cracks in the concrete driveway repaired, retaining walls rebuilt and a storage building rebuilt. It was obvious to the Complainant the Respondent had simply tricked the Respondent and was deceptive about the "AS IS" offer. The Respondent's Buyer was never going to accept the \$250K offer. The Complainant alleges the Respondent had planned this all along and did not negotiate in good faith. The Complainant alleges this was unethical and deceptive.

The Respondent provided a response and stated the Respondent's client was interested in the home when it was listed but kept looking at other homes and when the client decided on the subject property, the listing had been removed. The Respondent contacted the Complainant's agent to find out if the home might still be available. The Complainant's real estate agent indicated the home may be available after some minor repairs were performed and the Respondent's client was interested in purchasing the home without the repairs being done and the price being reduced. There was never a mention of the home being sold "AS IS." The offer did not include any language that the home was to be purchased "AS IS." In fact, the Purchase and Sale Agreement shows the offer date of July 8, 2020 with a twelve-day inspection period and a three-day resolution period. There were no inspections waived. At no time, was the Respondent's client making an "AS IS" offer on the property and the Complainant is under the mistaken impression the home was being purchased "AS IS." An "AS IS" counteroffer did not imply the Buyer was purchasing the home regardless of the outcome of the inspections. The Respondent's client was not making an offer and subtracting the cost of what was being spent for the repairs. The client was not making an offer for the list price, less the repair costs without any cost estimates. This was not an open-ended offer. The home had originally been listed for \$259,000 and the Respondent's client offered \$240,000 with no request from the Complainant to make any repairs for windows, siding or flooring. The counter was for \$250,000 and the home was to be sold "AS IS," however the counter also explains the Complainant was in the process of making the repairs discussed above and were not completed. Also, the counter stated all the other terms of the original attached purchase and sale agreement were to be accepted by the parties. The Respondent's client never waived any right to inspections or to the resolution period. When the repair/replacement proposal was submitted, there was an option to reduce the purchase price for all the items that needed to be repaired. Therefore, the total purchase price would be reduced by \$13,000 if the Complainant did not want to perform the repairs to the home. There was a clear misunderstanding by the Complainant. The Respondent also submitted a Mutual Release of PSA and Disbursement of Trust Money notification to the Complainant's agent and the Complainant never signed the document. The trust money was received on August 4, 2020, but the document was never returned to the Respondent.

Based on the complaint, the Respondent has not violated any of the laws or rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**40. 2020056481**

**Opened: 8/10/2020**

**First Licensed: 11/27/2017**

**Expires: 11/26/2021**

**Type of License: Affiliate Broker**

**History: None**

Complainant is an anonymous Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent offers to pay cash for bringing Buyers to purchase residential real estate.

The Respondent provided a response and stated the anonymous complaint stating the Respondent gave cash to the anonymous complainant. The Respondent has not provided cash to bring customers to the Respondent or to any individuals or client after a closing or at any other time.

There is not enough details or proof to indicate the Respondent has violate the laws or rules of the Tennessee Real Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**41. 2020056601**

**Opened: 8/10/2020**

**First Licensed: 8/15/2013**

**Expires: 8/14/2021**

**Type of License: Affiliate Broker**

**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent came to her home and pounded on the door several times between 9:30 pm and 10:00 pm. The Complainant did not answer the door and looked outside and saw several cars outside. The next day, the Complainant received a call from a man The Complainant received a call the next day from the Complainant's financial advisor who verified it was the Respondent and also indicated to the Complainant there would be several e-mails that would be sent to the Complainant. The man advised the Respondent took the Complainant's information from his client list. On July 9, 2020, the Respondent created a fake Facebook account using private information found the Complainant's financial advisor's computer and information from the Complainant's LinkedIn account. The Complainant also received e-mails from the Respondent making false accusations against the Complainant and calling the Complainant "a little whore."

The Respondent provided a response and stated there was no truth to the allegations made by the Complainant. The Respondent never went to the Complainant's home and never knocked on the door. The Respondent stated the Complainant came to the Respondent's home and peeped through the Respondent's windows and the Respondent asked her boyfriend to go outside and see who was

there and found the Complainant. The Respondent's boyfriend is the Complainant's financial advisor. The Respondent called the police and the Respondent filed a restraining order against the Respondent. The Complainant also had a previous arrest in 2011 for criminal trespassing in Tennessee. The Complainant had a prior personal relationship with the Respondent. The Respondent stated the Complainant had a history of stalking the Respondent's boyfriend. The Respondent has been involved in a personal relationship with the Complainant's financial advisor for the past three years and the Respondent was using the boyfriend's computer and came across several concerning e-mails from the Complainant to the Respondent's boyfriend. The Complainant sent over 50 e-mails within a couple of weeks. The Respondent admits to sending one e-mail asking the Complainant to explain herself, but the Respondent never got a response from the Complainant. The Respondent has also been receiving messages from a fake Facebook account, but the Respondent has not been sending herself any messages from a Facebook messages. The person sending the messages accused the Respondent's boyfriend of having relationships with other women outside of his relationship with the Respondent. The Respondent suspects these messages are actually being sent by the Complainant. The Respondent does not have any private information about the Complainant and has not been using any information from the Complainant's LinkedIn account. After the Complainant repeatedly interfered with the Respondent's relationship with her boyfriend, the Respondent admits to sending the Complainant an unkind e-mail. This entire situation stems from the Complainant's desperate attempt to seek revenge on the Respondent for being involved with the ex-boyfriend of the Complainant. The Respondent's boyfriend is willing to confirm the facts of this matter.

There are not any violations of the laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**42. 2020057641**

**Opened: 8/10/2020**

**First Licensed: 11/29/2001**

**Expires: 3/20/2022**

**Type of License: Affiliate Broker**

**History: None**

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent was unable to sell the home after listing it with the Respondent for eight (8) months. The Complainant alleges the Respondent was aware of the situation concerning the Complainant's had a balloon payment on the mortgage due in November 2021 and urgency to sell the home. Another real estate agent sent a client to look at the house and the Complainant advised all wires on the ground would be removed by the time the client took possession of the property. The parties entered into a contract based on the representation of the Complainant to have all the loose wiring removed. After 17 days, the buyer decided to cancel the contract because the electrical wires were still laying on the ground and this had not been swiftly

remediated as stated by the Complainant and following the terms of the inspection. By this point, the Complainant demanded the \$1,000 Earnest Money Deposit (EMD) and the Respondent refused to turn over the EMD to the Complainant.

The Respondent provided a response and stated there was no reference in the contract of the electrical being excluded and the Complainant had an obligation to remove the loose wiring. The Complainant also refused to sign the release form after the contract was cancelled because of the unsafe electrical wiring. The EMD monies could not be released until there was a signed release from the Complainant. Additionally, the Respondent's mother was admitted to the ICU in critical condition on June 24, 2020 and the Respondent had to stay in the ICU until 8 pm each night because of the Healthcare Power of Attorney held by the Respondent and the COVID-19 pandemic. The Respondent listed the property according to the terms of the listing.

The Respondent has not violated the laws or rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation, but open a complaint against the Principal Broker.**

**43. 2020058161**

**Opened: 8/10/2020**

**First Licensed: 11/4/2016**

**Expires: 1/2/2022**

**Type of License: Principal Broker**

**History: None**

The Complainant is an anonymous Tennessee resident. The Respondent is a licensed Tennessee Principal Broker.

The Complainant alleges the Respondent provides a \$1,000 payment for referral of customers and provides \$3,000 after the closing. There was no proof supporting the allegation or any documentation or other evidence provided.

There is not sufficient details or proof to indicate the Respondent has violate the laws or rules of the Tennessee Real Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**44. 2020058171**

**Opened: 8/10/2020**

**First Licensed: 2/6/2018**

**Expires: 2/5/2022**

**Type of License: Affiliate Broker**

**History: None**

Complainant is an anonymous Tennessee resident. The Respondent is a licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent provides a 1% commission in cash to all individuals referring individuals that purchase a home.

There is not sufficient details or proof to indicate the Respondent has violate the laws or rules of the Tennessee Real Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**45. 2020051761**

**Opened: 8/10/2020**

**First Licensed: 1/30/2013**

**Expires: 1/29/2021**

**Type of License: Real Estate Firm**

**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Real Estate Firm.

The Complainant alleges the Respondent posted a sign on the Interstate in Tennessee that allows brokerage commission of 6%. The Complainant alleges this provides an unclear marketing/advertising message. The billboard also has a picture of "a child of color" with curse words symbols over the mouth of the child. The advertisement was not provided by the Complainant.

The Respondent provided a response and stated this is a marketing campaign and this complaint was filed by a former disgruntled agent. The Respondent stated the billboard does not violate the Commission's advertising rules.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation, but open a complaint against the Principal Broker.**

**46. 2020055471**

**Opened: 8/10/2020**

**First Licensed: 8/16/2007**

**Expires: 8/15/2021**

**Type of License: Real Estate Firm**

**History: None**

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Real Estate Firm.

The Complainant alleges the Respondent is buying Google ad words and running ads on Google using the Complainant's firm name. A Google search brings up the Respondent's name and their ad. The Complainant alleges this is false and misleading advertising. It is an intentionally deceptive practice aimed at luring prospects to their site by using the Complainant's firm name.

The Respondent provided a response and a stated the Respondent does purchase AdWords. The AdWords are not customizable and not created by the Respondent. The Respondent uses a service that other brokerages in Tennessee use for the Respondent's website. The service creates ads to target different markets. The company providing the service is expected to fully understand the Commission's real estate advertising laws and rules. The Respondent realizes ultimately the Respondent is responsible for all ads and does not believe any of the advertisements referenced were misleading. The Respondent is not aware of any misleading ads being produced and has contacted the management at the advertising service to advise them of the issue. The advertising service stated the use of a dynamic keyword insertion in the ads of "realty" and "Nashville" since both of these ads are relevant to a Google search of the Respondent. The advertising service also indicated it will revise the query to make sure the Complainant's name is removed when a query is made and it purposefully will exclude the Complainant's name so the Respondent's website does not appear in lieu of the Complainant's firm. Since this advertising service provides so many ads for brokerages across Tennessee, the Respondent wanted to make sure the advertiser was aware of this issue and to make sure that this does not happen again for the Respondent or others. The Respondent apologizes for this issue and never intended to intentionally deceive the public to lure prospects to our site by using the names of any other brokerage firms.

The Respondent has resolved and mitigated the situation and any confusion has been corrected and resolved.

**Recommendation: Letter of Instruction concerning the Commission's real estate advertising laws and rules.**

**Commission Decision: The Commission elected to close this complaint and open a complaint against the Principal Broker.**

**47. 2020050261**

**Opened: 8/10/2020**

**Unlicensed**

**History: None**

Complainant is a Florida resident and the Respondent is an unlicensed Tennessee real estate firm.

The Complainant alleges the Respondent manages an apartment complex and the apartment complex advertises, manages and rents units. The Complainant alleges this is a violation of state law and the Respondent is required to have a license.

The Respondent is corporation and falls under the exemption for licensure and operates and owns leasing apartments and Tennessee Real Estate Commission exempts such apartment complexes or leasing agents to be licensed as a real estate firm or real estate agent pursuant to Tenn. Code Ann. § 62-13-104(a)(1)(F).

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**48. 2020051311**

**Opened: 8/17/2020**

**First Licensed: 5/14/2013**

**Expires: 5/13/2021**

**Type of License: Affiliate Broker**

**History: None**

The Complainant is a Georgia licensed contractor and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant issued an invoice to the Respondent in early April 2020 for trimming out a home located in Tennessee in the amount of \$4,370.00. The Respondent acted as the General Contractor. The home was damaged in mid-April 2020 due to tornadoes. The final electrical inspection was scheduled on April 13, 2020. The inspection had not been completed and the Respondent still failed to pay the invoice. On May 18, 2020, the Respondent finally responded and stated there was a delay in the insurance payment being made and when it was paid to the Respondent, the Complainant would receive the payment. On July 2, 2020, the Complainant still had not heard from the Respondent and later learned the property had been sold to another party. The Respondent has changed phone numbers and the Complainant is unable to reach the Respondent.

The Respondent provided a response this was a personal financial matter and had nothing to do with the Respondent's real estate license and providing real estate services. The house in question was destroyed by a tornado in April 2020. The Respondent sold the home and informed the title

company the home had not been completed and the title company requested a notice of completion be filed in order to sell the home.

This complaint concerns a contractual dispute between the parties and concerns property owned by the Respondent.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**49. 2020054331**

**Opened: 8/17/2020**

**First Licensed: 8/2/2018**

**Expires: 8/1/2022**

**Type of License: Affiliate Broker**

**History: None**

Complainant is a Tennessee resident and the Respondent is licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent looked at this daughter's property and would decide whether or not to sell the home. The Respondent bought another person to the home and stated the Complainant's daughter, who holds the power of attorney for the Complainant and needed the Complainant to sign some blank documents under the guise the Complainant's daughter had already reviewed the documents. The Complainant later found the Respondent had not spoken with his daughter and the Complainant's daughter contacted the Respondent and stated they would not proceed with the agreement with the Respondent. The Respondent contacted the Complainant and stated there was a signed contract and the Complainant would not be allowed to cancel the contract. The Complainant's daughter also received a phone call concerning the signed contract and the inability of the Respondent to cancel the contract. The Complainant alleges the Respondent engaged in fraud.

The Respondent provided a response and stated the Complainant's daughter wanted the Respondent to take over the "For Sale By Owner" listing for the Complainant. The Respondent conferenced the Complainant and set up a listing appointment. The Respondent's team leader came with the Respondent to discuss the home, list price, commission and other details concerning the home. The Complainant's daughter asked for a copy of the standard listing agreement to review the verbiage in the agreement and the blank listing agreement was sent to the Complainant. The documents were incomplete, and the Complainant did not sign a blank document. At the listing meeting, the Respondent met with the Complainant and the parties discussed the property. During this meeting, the Respondent asked if the Complainant would like to sign the listing agreement and the Complainant agreed. Each section of the contract was explained, and the Complainant signed the document without hesitation. The Respondent had also notified the Complainant's daughter the listing agreement would be discussed during the meeting and the Complainant's daughter stated she was comfortable with the document and needed the Complainant to be comfortable with the document. The Respondent explained the entire document to the Complainant and asked the Complainant several times during the process if he understood and

whether there were any questions. The following week the Complainant's daughter called the Respondent and requested the return of the keys to the property because the Complainant did not want to use the Respondent to sell his home. The Complainant's daughter indicated the Complainant felt pressured to sign the documents and did not understand and the Complainant's daughter was the only one that could sign for the Complainant. The Respondent contacted the Complainant and he became very upset with the Respondent and started yelling and swearing and threatened legal action, so the Respondent ended the call. The Respondent attempted to salvage the relationship by e-mail and was unsuccessful. The Respondent did not want to work with a client that did not want to work with the Respondent, so the Respondent mailed the keys back.

The Respondent did not violate the laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**50. 2020054351**

**Opened: 8/17/2020**

**First Licensed: 4/30/2014**

**Expires: 4/29/2020**

**Type of License: Affiliate Broker**

**History: None**

Complainant is a Tennessee resident and the Respondent is licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent looked at this daughter's property and would decide whether or not to sell the home. The Respondent bought another person to the home and stated the Complainant's daughter, who holds the power of attorney for the Complainant and needed the Complainant to sign some blank documents under the guise that the Complainant's daughter had already reviewed the documents. The Complainant later found the Respondent had not spoken with his daughter and the Complainant's daughter contacted the Respondent and stated they would not proceed with the agreement with the Respondent. The Respondent contacted the Complainant and stated there was a signed contract and the Complainant would not be allowed to cancel the contract. The Complainant's daughter also received a phone call concerning the signed contract and the inability of the Respondent to cancel the contract. The Complainant alleges the Respondent engaged in fraud.

The Respondent provided a response and stated the Complainant's daughter wanted the Respondent to take over the For Sale By Owner listing for the Complainant. The Respondent conferenced the Complainant and set up a listing appointment. The Respondent's team leader came with the Respondent to discuss the home, list price, commission and other details concerning the home. The Complainant's daughter asked for a copy of the standard listing agreement to review the verbiage in the agreement and the blank listing agreement was sent to the Complainant. The documents were not completed, and the Complainant did not sign a blank document. At the listing meeting, the Respondent met with the Complainant and the parties discussed the property. During this meeting, the Respondent asked if the Complainant would like to sign the listing agreement

and the Complainant agreed. Each section of the contract was explained, and the Complainant signed the document without hesitation. The Respondent had also notified the Complainant's daughter the listing agreement would be discussed during the meeting and the Complainant's daughter stated she was comfortable with the document and needed the Complainant to be comfortable with the document. The Respondent explained the entire document to the Complainant and asked the Complainant several times during the process if he understood and whether there were any questions. The following week the Complainant's daughter called the Respondent and requested the return of the keys to the property because the Complainant did not want to use the Respondent to sell his home. The Complainant's daughter indicated the Complainant felt pressured to sign the documents and did not understand and the Complainant's daughter was the only one that could sign for the Complainant. The Respondent contacted the Complainant and he became very upset with the Respondent and started yelling and swearing and threatened legal action, so the Respondent ended the call. The Respondent attempted to salvage the relationship by e-mail and was unsuccessful. The Respondent did not want to work with a client that did not want to work with the Respondent, so the Respondent mailed the key back as requested.

The Respondent did not violate the laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**51. 2020055731**

**Opened: 8/17/2020**

**First Licensed: 3/6/1997**

**Expires: 1/2/2022**

**Type of License: Affiliate Broker**

**History: None**

Complainant is a licensed Tennessee Real Estate Appraiser and the Respondent is licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent is blocking the Complainant from appraising the Respondent's listing and there have been past issues where the Respondent went directly to the owner of the local lender and stated the Respondent did not want the Complainant to appraise his listings. The lender stated this was not the option of the Respondent. This all stems from two appraisals performed in 2017 where there were two deals that did not go smoothly. The Respondent contacted the borrower's lender on July 24, 2020 and Respondent stated the Complainant would not be permitted on the property. The Respondent was declined an appointment to appraise the property. The lender canceled the order from the Complainant and when the Complainant contacted the lender, the Complainant received an e-mail from the lender indicating the listing agent did not want the Complainant at the property. The lender resent the e-mail and stated the Seller did not want the Complainant on the property. The Complainant is attempting to work with the lender to get copies of the e-mails. The Complainant stated he is fair and objective and does not understand why the Respondent has a personality conflict with the

Complainant. This is improper for the Respondent to engage in such tactics and under the Frank/Dodd Act, the lender is not supposed to pick an appraiser in such a manner.

The Respondent provided a response and stated there were three appraisals where the Complainant undervalue property and the Complainant is on a probationary license status.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**52. 2020056401**

**Opened: 8/17/2020**

**First Licensed: 7/7/2015**

**Expires: 3/19/2021**

**Type of License: Principal Broker**

**History: None**

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Principal Broker.

The Complainant alleges the Respondent engaged in dishonest and unprofessional business practices. The Complainant states the Respondent engaged in self-serving interests and did not adequately represent the Complainants in the purchase of their first home. The Complainants allege the Respondent arrived at their home unannounced on December 4, 2019 and advised the home was being sold and the Respondent had been hired to sell the home because the Complainant's lease was ending in January 2020. The Complainant was interested in purchasing the home and the Respondent would assist in the purchase. Respondent again visited the Complainant with a prefilled contract and excluded the price of the home. The Respondent stated everything had been filled out and the VA form was also filled out and there would be a funding fee. The Complainant is a disabled veteran and served in the military for over 20 years and the Complainant knew there would not be a funding fee. The forms were prefilled by the Respondent prior to the meeting and the Respondent failed to ask the Complainant the length of time the Complainant had served in the military. The Respondent had prepared the offer based on what the owners of the property had requested. The Complainant had lived in the home for over five years and no improvements were made during the period of tenancy. The Respondent stated the owners were not willing to do anything and were only offering the right of first refusal to the Complainant because they had been good tenants. The Respondent had told the Complainant there was a list of potential buyers that were interested in the home. The Complainant felt rushed and had to make a quick decision on whether to purchase the home and felt somewhat pressured by the Respondent. The Complainant was not able to move so quickly, and the home was going to be quickly listed for sale on the market. The Respondent told the Complainant if the Complainant was not interested in purchasing the home, the home would begin to be shown the first week in February 2020. The Respondent failed to provide copies any documents that were signed by the Complainant. Also, the Respondent shared financial documents with the lender by e-mail without obtaining authorization from the Complainant. The Respondent also came and took pictures of the home when the Complainants were not present and without the permission of the Complainants.

The Respondent provided a response and denied the allegations in the complainant. The Respondent alleges the Complainants are being coached by a competitor's agent and managing broker as a retaliatory response to a pending Code of Ethics investigation against the competitor brokers. The documents provided by the complainants were confidential and were provided by the competing brokers. The Respondent filed an ethical violation complaint with the local real estate association against the competitors for violation Article 16 of the Code of Ethics and also filed a request for arbitration against the other broker at the same firm to recover commissions owed to the Respondent. The two competitors acted unethically and did not make reasonable efforts to ensure the Complainants were not currently under an agency agreement. These competitors continued to pursue an agency agreement with the Complainant after being made aware an agency agreement existed and closed on a property during the time the Respondent had a valid agency agreement with the Complainants. The complaint against the competitor real estate agents is still pending and a panel has been selected but the process has been delayed by the competitors because of an allegation stating it is a non-arbitratable matter. The Respondent signed an agency agreement with the sellers of the property in question on December 2, 2019 and listed the home. The property was being managed by a property management company. The property manager was the Respondent's competitor who was trying to obtain the business of the Complainant. The owners of the property had requested the Respondent ask the Complainants whether they were interested in purchasing the property and allow them to make an offer. The Respondent contacted the competitor broker who was the property manager to get more information concerning the Complainant's tenancy details and was unable to reach the competitor property manager and decided to visit the home the following evening and speak to the Complainant tenants directly. The Respondent briefly spoke with the Complainants and provided them with a letter detailing the representation of the owners and the impending sale of the property. The competitor property manager called the Respondent and was not pleased the Respondent had visited the Complainants and stated the Complainants would not purchase the home and stated their credit would not allow them to buy a home because they would not be approved. The competitor property manager had indicated she was unable to get the Complainants approved previously. The Complainant had indicated to the Respondent they were interested in buying a home and were unsure if they would be able to buy a home. The Respondent provided the Complainant with lender information and the Complainant contacted the lender to see if there was a possibility of being able to purchase the property. The lender was able to get them prequalified for a VA loan and the Respondent met with the Complainants again to finalize all the documents. The Complainant had asked the Respondent to provide the lender with all the necessary print outs of the financial documents and authorized the Respondent to provide them to the lender. The Respondent merely forwarded the documents sent by the Complainant and did not even open the attachments or view the details of any of the documents. The Complainants did not have the funds to pay closing costs and would not be able to bring money up front and wanted to be sure to be protected if something broke. The Respondent tried to work things out and the Respondent even met with the Complainants to explain to the Complainant in detail the home buying process. The Complainant's signed the Buyer's Agency Agreement. The Respondent spoke with them for over 3.5 hours. The Respondent never acted in a self-serving manner and the Respondent was a facilitator. The agency status clearly stated the licensee was not working for either party. The Respondent stated the Complainants were always aware the Respondent was working for both parties even after signing the RF 141 Buyer's Agency Agreement. On Lines 147-162, the default

status indicates Facilitator & Resumption of Agency Status. This was also explained to the Complainants if the Complainants decided to go ahead with the purchase of the property. Also, RF 303 Change in Agency Status was also signed by the Complainants on the same day the offer was written. The Respondent clearly disclosed the Respondent was a designated agent for both parties and would be a facilitator in the sale of the property. The Respondent stated until the Code of Ethics complaint was filed against the competitor property manager, there was no issue with the Respondent having possession of any of the Complainants financial or personal information. The Respondent stated the Sellers had an inspection completed and there were no issues with the home and the Respondent allowed the Complainants to negotiate those items that came up during the inspection period. The Respondent also helped the Complainants with the appraisal process and explained to them the details of the process and the Complainants options. The Respondent provided the Complainants all the support necessary for the list price including the market data and other comparables. Since the Complainant had told the Respondent that the Complainant had no funds to bring to the closing, the Respondent did not ask about the years of military service because it did not matter and was a consideration for the lender. The lender decided all the details concerning the funding of the loan and the fees and the Respondent was not involved in the details of the financial approval process or the VA loan details. The Respondent never pressured the Complainants and there is nothing to substantiate the claim. This was not a high pressures sales situation. The Respondent suspected there was an outside individual influencing the Complainant related to the transaction because the Complainant was behaving in a different manner with the Respondent. The Respondent processed the termination of the Purchase and Sale Agreement between the Complainant and the Sellers. There was never an “unbelievable amount of pressure” by the Respondent. The photographs of the home were done after the Complainants indicated they had moved out of the home and the Respondent did not take the photographs while the Complainants still had possession of the home. The Complainants violated the Buyer’s Agency Agreement and entered into a Buyer’s Agency Agreement with the competitor property manager.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel’s recommendation.**

**53. 2020057241**

**Opened: 8/17/2020**

**First Licensed: 10/24/2017**

**Expires: 10/23/2021**

**Type of License: Affiliate Broker**

**History: None**

The Complainant is a Tennessee resident. The Respondent is a licensed Tennessee Affiliate Broker.

The Complainant is was working as an onsite real estate agent for a home builder in Tennessee and a representative from another subdivision was going to send over a prospect from the other community that was interested in seeing a certain floorplan. The two individuals came to the home with children and the Complainant welcomed them and asked them to be sure that all the individuals were wearing masks. The two women stated they did not have masks for the kids and

the Complainant provided the masks to them, however the Respondent refused to have the kids wear masks. The Complainant alleges the two women refused to wear masks and challenged the Complainant. The Complainant insisted that they wear a mask in order to view the model and the Complainant advised them there was a mask mandate.

The Respondent stated there was no issue with wearing a mask. The Respondent was wearing a mask and did identify herself as a real estate agent. The Respondent was not there was an agent but visiting with a friend and children. The Respondent never physically or verbally assaulted the Complainant. The Respondent did not threaten, harass or slander the Complainant. There were no threats made. The Respondent never refused to wear a mask and the Respondent alleges the Complainant did not offer masks for the kids or offer to keep an eye on the kids.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**54. 2020057821**

**Opened: 8/17/2020**

**First Licensed: 1/25/2019**

**Expires: 1/24/2021**

**Type of License: Affiliate Broker**

**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker

The Complainant made an offer on a home on May 26, 2020 and the Respondent is the Owner Agent Seller. The Respondent agreed to replace the roof and have someone look at the HVAC unit. There was a signed Repair/Replacement Amendment after the home inspection was completed. The roof was being replaced and the closing date was set for July 17, 2020. Due to underwriting, the Complainant was not able to close on the original closing date and an extension was signed by the parties to close on July 22, 2020. Once again, underwriting was still backed up and this time the Respondent would not agree to an extension. The Respondent indicated the water heater was not working and the Respondent would have to make another mortgage payment. The Complainant went ahead with the walk through so the parties could close on the property. The Complainant offered to reimburse the Respondent for the water heater and to change the closing cost down from \$8,000 to \$7,600 to make up for the interest payment that had to be paid on the loan. This time, the Respondent agreed, and a new offer was signed on July 23, 2020. The closing date was set for July 31, 2020 and on July 28, 2020 the financing was completed, and the closing date was moved up to July 29, 2020. The walk through was completed on July 28, 2020 and the Complainant discovered the Respondent had not replaced the water heater and lied to the Complainant. The Complainant signed off on the final walk through so the deal could be completed and decided to replace the water heater. The Respondent also had not had anyone look at the HVAC. He stated he did not have time to have someone look at it because he was not sure when the closing date would occur. After the closing the Respondent wanted to return to the home to get a few things and remove the couch. The Complainant agreed to allow the Respondent to remove the items until 6 pm. When the Complainant arrived at the home, the home was a complete

mess and looked nothing like the house had looked like the night before the closing. There was trash, dirt on the floor, food, ants crawling on the living floor from the food. The Complainant had to call in a pest control company to have the home sprayed. Also, all the curtain rods, toilet paper rolls had been removed.

Respondent provided a response and stated when the Respondent agreed to the offer there was a 52-day closing period. This was more than adequate time to close on the property. The Complainant had a previous bankruptcy and there were many things that needed to be cleared before the bank would allow the Complainant to obtain a home loan. All the inspections were completed, and the parties agreed to the roof being replaced and the HVAC certified that it was in proper working condition. The roof was replaced, and the Respondent was waiting for the closing before a certificate for the HVAC system was obtained from an HVAC specialist. The Respondent had no trouble with the system and there were no issues. The loan had been approved and there were still several issues that had to be cleared up and the closing was going to be delayed. The Respondent agreed to an extension. Since there was a lack of communication and there had been multiple appraisals, the Respondent was not willing to agree to another extension, however, the Respondent reluctantly agreed to extend the closing date once again. The Respondent went to the home on July 19, 2020 and moved out all the unwanted furniture and belongings and also planned to have an HVAC technician meet them at the home to make sure the unit was in good working condition. While visiting the home, the Respondent discovered the water heater was not working. The Respondent was later told on the following Monday the closing was again delayed. The water heater was going to cost \$750 to be replaced. The Respondent again agreed to another extension. Due to the closing date being moved so many times, the Respondent had not had an opportunity to remove all the items from the home and requested permission prior to the closing to come and remove them the day of the closing. Due to time constraints, the Respondent was not able to remove all the items from the home and even left many items the Complainant had requested be left with the home. There was no food or trash left in the home and the Respondent did not see any ants or other pests in the home.

**Recommendation: Authorize a formal contested case proceeding and allow the Respondent to informally settle by Consent Order and assessment of a \$1,000 civil penalty for failure to diligently exercise reasonable skill and care in providing services to all parties to the transaction.**

**Commission Decision: The Commission elected to dismiss this complaint.**

**55. 2020058701**

**Opened: 8/17/2020**

**First Licensed: 7/10/2009**

**Expires: 7/9/2021**

**Type of License: Affiliate Broker**

**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Affiliate Broker.

The Complainant entered into a contract for the purchase of a home and the Respondent represented the Complainant and the Seller. The final price of the home was \$360,000 and was being sold fully furnished. The Complainant placed \$10,000 in escrow and wired the balance of the remaining cash purchase funds on July 30, 2020. The final walkthrough was conducted on July 31, 2020 and the Complainant believed the Seller would be attending the closing. Later, the Complainant Buyer was told by the real estate agent, the Seller would provide the keys later that day or the following day since the Seller was going to stay in the home overnight to remove the remaining personal items from the home. This occurred when the Buyer was driving to the closing. As a result, the Complainant cancelled the closing and the real estate agent provided erroneous reason in the mutual release documents. The Complainant had not received the earnest money and is also owed \$455 compensation for inspection, chimney cleaning, water company deposits and wire transfer fees. The Respondent was deceptive and failed to inform the Complainant of relevant facts in a timely manner.

The Respondent provided a response and provided all relevant documents concerning the transaction. The mutual release was corrected to state the Seller had not vacated the property prior to the final walk through or to closing and had not removed their personal property and it was uncertain as to when they would vacate the property. The Complainant has received the return of all earnest money.

**Recommendation: Authorize a formal contested case hearing and allow informal settlement by Consent Order and assessment of a civil penalty of \$1,000 for failure to diligently exercise reasonable skill and care in providing services to all parties to the transaction.**

**Commission Decision: The Commission elected to dismiss and close the complaint.**

**56. 2020058741**

**Opened: 8/17/2020**

**First Licensed: 3/24/2017**

**Expires: 3/23/2021**

**Type of License: Affiliate Broker**

**History: None**

Complaint is an anonymous complaint filed by a Tennessee resident. The Respondent is a licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent is a licensed Certified Public Accountant and creates fake checks for all people the Respondent sells homes for and creates fake income for them to be qualified in order to sell homes to them.

The Respondent provided a response and stated it was a baseless and false claim and there was no corroborating proof or documents provided with the complaint. The anonymous complaint is not written in full sentence format and does not even explain or provide any details concerning the allegations against the Respondent.

There was insufficient proof provided to support the allegations in the complaint.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**57. 2020058921**

**Opened: 8/17/2020**

**First Licensed: 7/6/2017**

**Expires: 7/5/2021**

**Type of License: Real Estate Broker**

**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent posted a billboard sign and the letters with the agent's name are more than twice the height of the letters in the name of the brokerage.

The Respondent provided a response and stated there was a misprint on the sign and this was a mistake. The sign has been removed.

**Recommendation: Authorize the issuance of a Letter of Warning concerning the advertising rules of the Tennessee Real Estate Commission.**

**Commission Decision: The Commission elected to send a Consent Order with a \$500.00 civil penalty for the advertising violation**

**58. 2020059571**

**Opened: 8/17/2020**

**First Licensed: 8/18/2017**

**Expires: 8/17/2021**

**Type of License: Affiliate Broker**

**History: None**

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker

The Complainant alleges an offer was presented to the listing agent and the Complainant stated there was no agent providing the Complainant with representation. The Respondent provided a response to the Complainant and stated the Seller would not accept anything less than \$28,000. The Complainant was never presented with a purchase contract and the Complainant has no evidence the Seller was even presented with the original offer. The Complainant agreed to the purchase price of \$28,000 and made an offer in that amount. The Complainant had now made two offers and never received any paperwork in response to the offers. The Respondent later responded

and stated the Seller would accept \$27,000 if half of the Respondent's commission was paid. The Complainant offered \$26,500 and half of the commission for the sales price and the Complainant still did not receive any paperwork in return or a purchase contract. The Respondent again responded to the Complainant and stated there was another offer for \$28,000 and the Seller will not take anything less than \$27,000 and half of the commission. The Complainant advised an offer of \$28,000 had already been made and the Seller changed the offer.

The Respondent provided a response and stated the Respondent had open heart surgery on July 30, 2020 and the Respondent was attempting to accommodate the Complainant when the Respondent should be been on bed rest. The Seller kept changing her mind. The Respondent provided text messages to corroborate the changes from the Seller. The Respondent never produced a Purchase and Sale Agreement to the Complainant because the Respondent had to continuously follow-up with the Sellers concerning the offers. The Respondent had been attempting to get clarity on the counteroffers from the Seller and did not want to produce an incorrect contract. The Complainant abruptly ended the negotiations. The Respondent was attempting to work with the Complainants, but another lower offer was made by the Complainants and the Sellers would not accept it.

**Recommendation:** Authorize the issuance of a Letter of Warning concerning the duty to diligently exercise reasonable skill and care in providing services to all parties to the transaction pursuant to Tenn. Code Ann. § 62-13-403(1).

**Commission Decision:** The Commission accepted counsel's recommendation.

**59. 2020060001**

**Opened:** 8/17/2020

**First Licensed:** 12/28/2010

**Expires:** 12/13/2021

**Type of License:** Principal Broker

**History:** None

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Principal Broker.

The Complainant alleges the Respondent is a principal broker for two companies in two different counties.

The Respondent provided a response and stated the Complainant is the former broker and cousin of the Respondent. The Respondent was the owner of two companies at two different periods of time. The first company was closed in July 2020 and the Respondent opened a new firm in another county. The Respondent has been working to get everything changed over. The Respondent included all documentation for all local associations and the Tennessee Real Estate Commission.

**Recommendation:** Close.

**Commission Decision:** The Commission accepted counsel's recommendation.

**60. 2020052531**  
**Opened: 8/17/2020**  
**Unlicensed**  
**History: None**

The Complainant is a Florida resident and the Respondent is an unlicensed real estate firm.

The Complainant alleges the Respondent operates as an online real estate brokerage firm and is owned by a Florida corporation and does not have a Tennessee real estate firm license.

**Recommendation: Authorize a formal contested case proceeding and assess a civil penalty in the amount of \$1,000 for operating as an unlicensed real estate firm in the State of Tennessee.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**61. 2020053461**  
**Opened: 8/17/2020**  
**Unlicensed**  
**History: None**

The Complainant is a Florida resident and the Respondent is an unlicensed real estate firm.

The Complainant alleges the Respondent operates as an online real estate brokerage firm and is owned by a Florida corporation and does not have a Tennessee real estate firm license.

**Recommendation: Authorize a formal contested case proceeding and assess a civil penalty in the amount of \$1,000 for operating as an unlicensed real estate firm in the State of Tennessee.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**62. 2020060551**  
**Opened: 8/17/2020**  
**First Licensed: 7/10/2020**  
**Expires: 7/9/2022**  
**Type of License: Real Estate Firm**  
**History: None**

The Complainant is a Florida resident and the Respondent is an unlicensed real estate firm.

The Complainant alleges the Respondent operates as an online real estate brokerage firm and is owned by a Florida corporation and does not have a Tennessee real estate firm license.

**Recommendation: Authorize a formal contested case proceeding and assess a civil penalty in the amount of \$1,000 for operating as an unlicensed real estate firm in the State of**

Tennessee.

**Commission Decision: The Commission elected to dismiss this complaint as the Respondent is licensed.**

**63. 2020051521**

**Opened: 8/17/2020**

**First Licensed: 8/23/2017**

**Expires: N/A**

**Type of License: Time Share Registration**

**History: None**

The Complainant is a resident of the State of Washington and the Respondent holds a Tennessee Time Share Registration.

The Complainant alleges during a vacation in Tennessee in August 2018, the Respondent held a short sales presentation for the purchase of a time share property. There were multiple resorts available for sale. The Respondent failed to disclose that in order to use all of the resorts, there would be a \$99/night fee. The Complainant was not aware of this until the Complainant decided to book a resort in North Idaho and the Complainant was told all resorts in the West are a different category of resort and would require a \$99 fee. The Respondent's representative talked to the manager and found out that if the Complainant purchased additional points, this would allow the Complainant to have access and make the reservations process easier for the Complainant. The Complainant took advantage of the additional points being offered and was not aware there would be additional maintenance fees every month. After having two loans for the timeshares and two separate bills, the Complainant wanted to consolidate the loans and in May 2019, when the Complainant went on a vacation, the Complainant contacted the concierge desk to schedule a meeting. There was additional sales presentation for points for a Hawaii by reserving two rooms, a single and a four bedroom and the representative asked the Complainant to upgrade to a four bedroom which would be available. The Complainant was told that in order to combine the two contracts, a new contract would have to be drafted and it was never mentioned that in order to do this, the Complainant would have to purchase additional points. The Respondent kept indicating to the Complainant that this was a good time to do this because the interest rates had gone down. The Complainant also had to fill out application forms for a credit card and the Complainant knew the Complainant would not qualify for the credit card. The Complainant's wife was provided another credit card and the contract was consolidated. The Complainant ended up spending one full day of their vacation in order to get this done and dealt with four different representatives in order to complete the consolidation. The Complainant stated when the first set of points were purchased, they were already combined and were not told it was not necessary to do the consolidation. The Complainant now has two mortgages for the timeshare properties and there are far too many points that the Complainant can no longer afford. The Complainant has to pay \$1,700 per month in mortgage payments and cannot afford it. The Complainant has attempted to contact the Respondent to get rid of some of the extra points, but the Respondent is unable to accommodate the Complainant. The Complainant seeks a cancellation of the contracts and a full refund.

The Respondent provided a response and stated the Complainants entered into a valid agreement for the purchase of timeshare points and agreed to trade an existing contract. The Complainant also has a vacation membership account for the exchange program. The maintenance fee is determined based on the inventory from each resort location. All proper disclosures were provided to the Complainants at each time of purchase and the Complainants signed all necessary documents for the loan for the purchase of the timeshares. The Complainants did not cancel the contracts within the contract rescission time frame. Nevertheless, the Respondent has agreed to cancel one of the contracts and issue a refund. On January 22, 2019, the Respondent sent a settlement agreement for the release of all claims for them to sign and the Complainants never submitted the signed document by June 4, 2020. The offer was considered null and void and the case was closed. The offer was available to the Complainants until August 11, 2020 and the Complainants did not submit any cancellation documents. There was no evidence of any improper activity by the Respondent and the Respondent did not find any evidence substantiating the allegations by the Complainant.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**64. 2020058751**

**Opened: 8/24/2020**

**First Licensed: 4/20/1999**

**Expires: 12/31/2020**

**Type of License: Time Share Registration**

**History: None**

Complainant is a South Dakota resident and the Respondent holds a valid Time Share Registration in Tennessee.

The Complainant purchased a timeshare from the Respondent on July 26, 2020. A few hours after the purchase, the Complainants wanted to cancel the timeshare. The customer service indicated the Contract and Deeding specialist would contact the Complainants. The specialist contacted the Respondent the same evening and stated it would be necessary for them to drive back to cancel the contract. The Complainants could not drive back from out-of-state and the Complainants contacted the corporate office the following day. The Complainants were advised the supervisor at the resort would need to be contacted to cancel. The Respondent's representative supervisor stated the items would have to be sent back to the Respondent with signature and tracking required. The package was sent the following day for overnight delivery. By the following Friday, the Respondent's supervisor representative had still not received the package. The tracking indicated delivery had been attempted, but no one had been available to accept receipt of the package. The Respondent's supervisor wanted the Complainant to reschedule the delivery and it was rescheduled. The Respondent's supervisor insisted the cancellation could not be processed until the material was received. The Complainant alleges the Respondent is delaying the matter and the 10-day cancellation period will expire.

The Respondent provided a response and stated the parties have resolved this matter and reached an amicable resolution. The Complainants contract was rescinded, and the Complainants received a full refund within the rescission period.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**65. 2020060291**

**Opened: 8/24/2020**

**First Licensed: 4/20/1999**

**Expires: 12/31/2020**

**Type of License: Time Share Registration**

**History: None**

The Complainant is a Tennessee resident and the Respondent is a Tennessee Time Share Registrant.

The Complainant alleges there were numerous issues concerning the Respondent's properties. On one occasion the couch was broken and there have been many problems with the appliances in the units. On one occasion the bed fell on the floor. Also, there appeared to have been people entering their rooms when the Complainants were not present during one of the Complainant's visits to the Respondent's property.

The Respondent provided a response and were apologetic to the Complainant about the various issues and inconveniences experienced during the stays with the Respondent. The Respondent values quality customer service and if the service standards are not met, the Respondent would like to know about any issues with the property. The Respondent does not require attendance at the owner's update meetings and the Complainants are always free to leave and there is no purchase required. The Respondent wants to make every effort to make sure the vacation is enjoyable and advises the Complainants to make the front desk always aware of any issues immediately. The Respondent stated there was no wrongdoing that would warrant the cancellation and refund of the contract and the Respondent is unable to cancel the contract.

The rescission period has expired in the contract and the statutory period for the Complainant to bring a civil action on the validity of a contract of purchase and/or a rescission of the contract or damages must be commenced within four (4) years after the date of the contract of purchase pursuant to Tenn. Code Ann. § 66-32-119.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**66. 2020058451**

**Opened: 8/31/2020**

**Unlicensed**

**History: None**

This complaint was administratively opened against the timeshare company. The Respondent is an unlicensed timeshare registrant in Tennessee.

The Complainant alleges the Respondent contacted the Complainant to purchase the time share for resale. The Respondent is a not hold a timeshare registration in Tennessee.

The Respondent did not provide a response to the complaint.

**Recommendation: Authorize a formal contested case proceeding for unlicensed activity for operating as an unlicensed timeshare company with the authority to informally settle the matter for a \$1,000 civil penalty.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**67. 2020061391**

**Opened: 8/31/2020**

**First Licensed: 4/20/1999**

**Expires: 12/31/2020**

**Type of License: Time Share Registration**

**History: None**

Complainant is a Mississippi resident and the Respondent holds a Tennessee timeshare registration.

The Complainant has indicated no more payments will be made to the Respondent for the timeshare property purchased. The Complainant stated their son was delivered at 24 weeks gestation weighing 1.3 pounds and was in the Neo Natal ICU for 19 days. Unfortunately, their son passed away and the burial was held on May 30, 2016. After about five weeks, the Complainants decide to take a short vacation and have a short getaway. The Complainants were approached a told they could get free show tickets from the Respondent. The Complainants decided to attend the sales presentation for over five hours and ended up purchasing a timeshare. The Respondent even arranged for the 10% down payment to be charged to a credit card opened by the Respondent with an interest rate of 17.99%. The Respondent had their own mortgage and finance division and they charge a very high interest rate. The Complainants allege they were not aware of the 15-day rescission period and if they were aware, they would have cancelled the purchase within the period. This past year the Complainants had a healthy daughter who requires special feeding needs. The special feeding needs are expensive and not covered by insurance. The Complainants contacted the Respondent to find out if the ownership could be cancelled and were told that was not possible. The Complainants allege payment of over \$20,000 has been made in the past four years to the Respondent and the Complainant has used the resort only on one occasion.

The Complainants are no longer able to afford the cost of the timeshare and have been unable to sell it.

The Respondent provided a response and stated the Complainants purchased the timeshare on July 8, 2016. The Respondent stated the Complainants voluntarily purchased a timeshare interest after all disclosures were made concerning the terms and conditions associated with the purchase. The Complainants were only required to attend a 90-minute presentation and had no obligation to remain past this timeframe. The Complainants signed the Acknowledgment of Representation and affirmed the ability concerning having the requisite financial capacity to enter the transaction. There were no representations ever made concerning the timeshare being an investment or having resale potential and the purchase was primarily for personal use and not investment purposes. There were never any representations made the Complainants could seek alternate financing once the transaction was completed with the Respondent. The Respondent disclosed all mandatory terms of rescission and the Complainants acknowledged by signing the writing of a receipt of a paper copy of the Purchase Contract which also contained the terms of the rescission. The Respondent is unable to rescind the contract or provide a refund.

The rescission period has expired in the contract and the statutory period for the Complainant to bring a civil action on the validity of a contract of purchase and/or a rescission of the contract or damages must be commenced within four (4) years after the date of the contract of purchase pursuant to Tenn. Code Ann. § 66-32-119.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**68. 2020062111**

**Opened: 9/8/2020**

**Unlicensed**

**History: None**

Complainant is a Tennessee resident and the Respondent is the owner of an apartment complex.

The Complainant alleges the Respondent operates the apartment complexes in the Tennessee area and does not have a real estate firm license.

The Respondent provided a response and stated the Complainant applied for a lease with the Respondent and signed a legally binding contract which explicitly stated the Complainant agreed to pay a non-refundable application and administrative fees. A few months later after signing the lease, the Complainant did not want to take possession of the apartment and stated the Complainant's wife took objection to the existence of the power lines on the property. The Complainant was supposed to pay lease termination fees, however, the Respondent waived those fees. The Respondent is not required to be a license real estate firm in order to lease apartments.

The Respondent is corporation and falls under the exemption for licensure and operates leasing apartments and Tennessee Real Estate Commission has not required apartment complexes or leasing agents to be licensed as a real estate firm or real estate agent.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**69. 2020054851**

**Opened: 9/8/2020**

**Unlicensed:**

**History: None**

Complainant is a Tennessee resident and the Respondent is not a real estate agent in the State of Tennessee.

The Complainant alleges the Respondent acted unethically by using racial slurs and made derogatory remarks to the Complainant. The Complainant was having a fence installed and the Respondent approached the fencing contractors and made derogatory remarks to them and started yelling at them because the Respondent did not want anyone to step foot on the Respondent's property. The Complainant had already had a survey done and had highlighted spray paint marks showing the exact property line and the fence was being placed in the exact location of the old fence. The Respondent disputed the property line and left to call the police. The contractors had to come back the next day and the Complainant had to move the fence line by 14 inches to allow for three feet outside the fence line.

The Tennessee Real Estate Commission lacks jurisdiction over this matter. This is a dispute between the parties. The Respondent is not engaged in unlicensed activity and is not a real estate agent in Tennessee

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**70. 2020057811**

**Opened: 8/31/2020**

**First Licensed: 8/23/2017**

**Expires: N/A**

**Type of License: Time Share Registration – Time Share Exempt**

**History: None**

Complainant is an Indiana resident and the Respondent holds a Tennessee Time Share Exemption.

Complainant purchased a timeshare from the Respondent in 2013. The Complainant alleges the Respondent has defrauded the Complainant. The Respondent engages in misrepresentations and false promises. The Complainant is stuck in a timeshare scheme and the Respondent continues to tell the Complainant mistruths.

The Respondent provided a response and stated the rescission period has expired and denies the allegations made by the Complainant. The Complainant purchased another timeshare in 2016 and received additional disclosures concerning the timeshare ownership. There were no misunderstandings and the Complainant is explained all details concerning the purchase and signs various acknowledgments throughout the timeshare purchase process. There are specific written disclosures provided regarding ownership, assessment and all programs related to the timeshare. The rescission rights are also provided during each purchase and this information is explained fully to all timeshare purchasers. The Respondent has denied the Complainant's cancellation requests.

The rescission period has expired in the contract and the statutory period for the Complainant to bring a civil action on the validity of a contract of purchase and/or a rescission of the contract or damages must be commenced within four (4) years after the date of the contract of purchase pursuant to Tenn. Code Ann. § 66-32-119.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**71. 2020061711**

**Opened: 9/8/2020**

**Unlicensed**

**History: None**

Complainant is a Tennessee resident and the Respondent is the owner of apartment complexes in Tennessee.

The Complainant alleges one of the apartment complexes owned by the Respondent has violated the CARES Act by charging a 10% late fee for late rental payments.

The Respondent provided a response and stated the Respondent does not charge residents late fees. The Respondent has not charged any late fees to any residents during the periods of April to July 2020. The Complainant's ledger shows there were no late fees charged.

The Respondent is corporation and falls under the exemption for licensure and operates leasing apartments and Tennessee Real Estate Commission has not required apartment complexes or leasing agents to be licensed as a real estate firm or real estate agent.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**72. 2020057701**

**Opened: 9/8/2020**

**Unlicensed**

**History: None**

Complainant is a Tennessee resident and the Respondent is an unlicensed Tennessee real estate agent.

The Complainant alleges the Respondent is not licensed and is marketing homes for others on social media and different Facebook groups.

The Respondent did not provide a response to the Tennessee Real Estate Commission.

**Recommendation: Authorize a formal hearing for being an unlicensed real estate agent and authorize informal settlement by Consent Order in the amount of \$1,000 for unlicensed activity.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**73. 2020057161**

**Opened: 8/24/2020**

**First Licensed: 8/19/2009**

**Expires: 8/18/2021**

**Type of License: Time Share Registration**

**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Time Share Registration.

The Complainants own a timeshare which was purchased in 2015. In 2016, the Complainants traded-in the first timeshare and purchased another timeshare property by purchasing additional points to give the Complainant more travel options. In 2019, the Complainants purchased another 17,500 points to receive "Full Gold Loyalty Benefits and Temporary Platinum Loyalty Benefits." The next trip in May 2019, the Complainant was advised they did not have "Full Gold Loyalty Benefits" and needed more points. The Complainants states the Respondent has too many discrepancies and is engaged in deceptive sales tactics. The Complainant seeks a cancellation of the contract and a refund of all loan payments and down payments.

The Respondent provided a response and stated the sales presentations are not mandatory for members and members may choose to attend sales presentations. Members are not required to purchase additional points and can leave the presentation at any time. The Respondent always provided full disclosures during all the purchases made by the Complainant. The Respondent stated the Complainant's allegations are unsubstantiated and the Respondent will not release the Complainant from the contractual obligations. Also, the Complainant is currently delinquent on

the loan for time share and the Respondent will proceed with cancellation of the timeshare interest due to default.

The rescission period has expired in the contract and the statutory period for the Complainant to bring a civil action on the validity of a contract of purchase and/or a rescission of the contract or damages must be commenced within four (4) years after the date of the contract of purchase pursuant to Tenn. Code Ann. § 66-32-119.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**74. 2020065471**

**Opened: 9/8/2020**

**Unlicensed**

**History: None**

Complainant is a Tennessee resident and the Respondent is a Homeowner's Association operating in the State of Tennessee.

The Complainant alleges a letter was received from the attorney representing the Respondent indicating there was a lien on the Complainant's home in the amount of \$1,007.97 for back payments due to the Homeowner's Association (HOA). The Complainants were not aware of any back payments and did not receive a warning or notice from the Respondent.

The Tennessee Real Estate Commission does not have jurisdiction over this matter and the Respondent is not subject to the jurisdiction of the Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**75. 2020066241**

**Opened: 9/8/2020**

**Unlicensed**

**History: None**

The Complainant is a Tennessee resident and the Respondent is an unlicensed real estate firm operating in the State of Tennessee and providing real estate services.

The Complainant received a postcard in the mail from the Respondent indicating the Respondents were engaged in the buying and selling of homes and were interested in selling the Complainant's home. The Complainant contacted the Respondent and asked if they had a real estate license and the Respondents indicated they operated similar to a For Sale by Owner type of company. On Facebook, the Respondent has listed itself as a Real Estate Investment firm, real estate company and real estate service provider.

The Respondent did not provide a response to the complaint.

**Recommendation: Authorize a contested case proceeding for unlicensed activity and assess a \$1,000 civil penalty for informal settlement by Consent Order.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**76. 2020064941**

**Opened: 9/8/2020**

**First Licensed: 4/3/2014**

**Expires: 4/2/2021**

**Type of License: Time Share Registration**

**History: None**

The Complainant is a Wisconsin resident and the Respondent is a licensed Tennessee Time Share registrant.

The Complainant requests cancellation of the timeshare for various reasons, including health issues. The Respondent has not been understanding about the Complainant's situation and refuses to cancel the contract. The Complainant has filed a complaint with the Better Business Bureau and has not received any updates. The Complainant purchased the timeshare in 2015 and were given misleading information by the Respondent.

Respondent provided a response and has provided various options to the Complainant, including the sale of the timeshare property. The Respondent is unable to accept the return of the deed from the Complainant.

The rescission period has expired in the contract and the statutory period for the Complainant to bring a civil action on the validity of a contract of purchase and/or a rescission of the contract or damages must be commenced within four (4) years after the date of the contract of purchase pursuant to Tenn. Code Ann. § 66-32-119.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**77. 2020069131**

**Opened: 9/8/2020**

**First Licensed: 4/3/2014**

**Expires: 4/2/2021**

**Type of License: Time Share Registration**

**History: None**

Complainant is a Georgia resident and the Respondent is a licensed Tennessee Time Share Registrant.

The Complainant purchased the timeshare in 2011 and has not used the timeshare in the past 9 years. The Complainant can no longer use the timeshare due to poor health. The Complainant has three stents in his heart and total kidney failure and is currently undergoing dialysis treatment. The Complainant cannot travel long distances and use the timeshare and wants to relinquish his ownership and obtain a refund. The timeshare has been paid in full and the Complainant has spoken with the Respondent about the timeshare and has filed complaints with the Better Business Bureau and the Tennessee Attorney General's Office. The Respondent has refused to allow the Complainant to cancel the contract.

The Respondent provided a response and stated the Complainant purchased the timeshare and is enrolled in the vacation club to enhance all travel options. The Complainant must make the reservations through the vacation club. The Respondent has suggested the Complainant sell the timeshare. The Respondent cannot cancel this contract or accept deeds due to individual circumstances unless it is from an estate when none of the heirs to the estate desire to retain ownership.

The rescission period has expired in the contract and the statutory period for the Complainant to bring a civil action on the validity of a contract of purchase and/or a rescission of the contract or damages must be commenced within four (4) years after the date of the contract of purchase pursuant to Tenn. Code Ann. § 66-32-119.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**78. 2020063351**

**Opened: 8/24/2020**

**First Licensed: 6/2/2014**

**Expires: 6/1/2022**

**Type of License: Affiliate Broker**

**History: None**

This complaint was administratively opened by the Tennessee Real Estate Commission. The Respondent is a licensed Tennessee Affiliate Broker.

The Respondent is suspected of falsifying education certificates to meet renewal requirements. The education provider has no proof of registration or attendance by the Respondent.

The Respondent provided a response and stated the certificates showing completion of courses were submitted to the Tennessee Real Estate Commission office and the administrative office responded stating that there was a discrepancy and the Respondent completed additional courses. The Respondent completed the required CEs as soon as it was pointed out there was a problem.

**Recommendation:** Authorize a contested case proceeding and assess a \$1,000 civil penalty for making a false representation by making a substantial and willful misrepresentation pursuant to Tenn. Code Ann. § 62-13-312(1) in submitting false education certificates to the Commission.

**Commission Decision:** The Commission voted to authorize a contested case proceeding and assess a \$4, 000.00 civil penalty and a six (6) month license suspension for the violation of making false representation by making substantial and willful misrepresentation pursuant to Tenn. Code Ann. § 62-13-312(1) in submitting false education certificates to the Commission.

**79. 2020061541**

**Opened:** 9/8/2020

**First Licensed:** 4/1/2016

**Expires:** 3/31/2022

**Type of License:** Vacation Lodging Service Firm

**History:** None

The Complainant is a Tennessee resident and the Respondent is a licensed Vacation Lodging Service firm.

Complainant alleges the Respondent sent out postcards that provides management services and targets the Complainant's business. The Respondent is attempting to solicit business directly from a current management company which is a violation. The postcard targets one company to secure business and there is no disclaimer on the postcard and no listing of the VLS# for the Respondent.

The Respondent provided a response and stated they were not aware of this practice and will be immediately reviewing all marketing efforts and stop any activities which are a violation. The Respondent will immediately resolve any marketing efforts that violates the VLS guidelines. The Respondent had no intention of operating in bad faith and had no intent to violate any VLS guidelines or laws.

**Recommendation:** Close.

**Commission Decision:** The Commission elected to open a contested case proceeding and issue a \$500.00 civil penalty via Consent Order for the advertising violation.

## CASES TO BE REPRESENTED

### SHILINA BROWN:

**80. 2020039331**

**Opened: 6/8/2020**

**First Licensed: 6/5/2000**

**Expires: 2/28/2022**

**Type of License: Affiliate Broker**

**History: None**

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant stated the Respondent has been managing the Complainant's property since May 2017 and in March 2020 advised the Respondent, the Complainant would be looking for an alternate management company because the Respondent had not been remitting payments of rents collected and not properly communicating with the Complainant. The Complainant stated the new management company would take over on May 1, 2020. The Respondent acknowledged the Complainant's communication and stated the tenant had paid \$450 and the Respondent would collect the rest of the March 2020 rent on Friday. On March 27, 2020, the Respondent indicated to the Complainant that all the rent had been collected and would forward the amounts to the bank. The Complainant also let the Respondent know the company that would be taking over the management and the company would be contacting him. To date, the Respondent has not made any deposit of monies for March or April 2020 rent payments. The new management company had spoken to the Respondent and expected everything to transfer smoothly, however, the Respondent will not release the ledger or provide the deposit of \$1,120 to the bank account. The Respondent has also kept the security deposit monies in the amount of \$650 and has not released any amounts to the new property management company.

The Respondent failed to provide a response; however, the Respondent's Principal Broker provided a response and stated the Respondent was not authorized to engage in property management and was unaware the Respondent was engaging in property management activities. The Respondent's Principal Broker just learned about the property management activities of the Respondent when the Principal Broker received the notice of the Complaint.

**Recommendation:** Authorize formal charges and assessment of a civil penalty in the amount of \$3,000 for making a substantial and willful misrepresentation (Tenn. Code Ann. § 62-13-312(b)(1)), engaging in conduct that constitutes improper, fraudulent or dishonest dealing (Tenn. Code Ann. § 62-13-312(b)(20)) and failing to provide a response to the Commission on a pending complaint (Tenn. Code Ann. § 62-13-313(2)).

**Decision:** The Commission elected to accept counsel's recommendation of the \$3,000.00 civil penalty and also to suspend the Respondent's license for six months.

**New Information:** The Complainant submitted additional information and stated the Respondent transferred all documents and paid all the rental monies due and outstanding. All issues have been resolved to the satisfaction of the Complainant and the Complainant wishes to withdraw the complaint.

**New Recommendation:** Close.

**New Decision:** The Commission elected to close and flag this matter.

**81. 2020029981**

**Opened:** 6/1/2020

**First Licensed:** 3/12/1999

**Expires:** 3/1/2013

**Type of License:** Principal Broker

**History:** 2012 Revocation for failure to remit monies belonging to others

The Complainant is a Tennessee resident and the Respondent is a Tennessee licensed Principal Broker. The Complainant alleges the Respondent held a Principal Broker's license which was revoked on November 7, 2012. The Complainant owns a four plex rental property in Tennessee and the Respondent agreed to handle the rental and property management of the four plex for the Complainant and would function as the rental manager. The Respondent was responsible for handling the rental of the units, tenant issues, collection of rents and forward the net rent payments after deducting fees and charges. The Complainant entered into a written agreement with the Respondent. In the Fall of 2019, the Respondent gave notice to the Complainant indicating the Respondent could no longer manage the property effective December 31, 2019. From October 2019 to the end of the year, the Respondent stopped sending the Respondent any net rental proceeds and continued to collect rent from the tenants. In January 2020, the Complainant could not get in touch with the Respondent and her telephone numbers were disconnected. The Complainant has a new property manager and has not been able to contact the Respondent and has not received any monies.

**Recommendation:** Authorize a formal hearing and assess a civil penalty in the amount of \$2,000 for the following violations: Tenn. Code Ann. § 62-13-312(5) for failing within a reasonable time account for or to remit any moneys coming into the licensee's possession, for the unlicensed practice of real estate pursuant to Tenn. Code Ann. § 62-13-301

**Commission Decision:** The Commission elected to defer this matter for sixty (60) days and to send it for investigation and present it at the December meeting.

**New Information:** This matter was sent for investigation and the Respondent has been indicated, arrested and charged with theft forgery and theft embezzlement and was released on \$20,000 bail bond. There is no information available on possible trial dates.

**Recommendation:** Authorize a formal hearing and assess a civil penalty in the amount of \$2,000 for the following violations: Tenn. Code Ann. § 62-13-312(5) for failing within a

**reasonable time account for or to remit any moneys coming into the licensee's possession, for the unlicensed practice of real estate pursuant to Tenn. Code Ann. § 62-13-301**

**New Commission Decision: The Commission elected to authorize a formal hearing and assess a civil penalty in the amount of \$1000.00 for unlicensed activity.**

**82. 2019031421**

**Opened: 4/11/2019**

**Type of License: Unlicensed**

**History: None**

Complainant alleges they entered into a contract with Respondent, unlicensed, to, exchange their current time-share interest for a membership in Respondent's vacation club. Complainant alleges that despite paying Respondent upwards of \$3,000 for their membership interest (which Respondent states was valued at over \$15k, but the cost was offset by applying Complainant's time-share) and delivering to Respondent a copy of their time-share deed, Complainant is still receiving maintenance fees and account statements from their time-share resort.

In response, a representative for Respondent states that the contract clearly shows that Respondent was to assume responsibility for maintenance and other fees beginning on January 1, 2020. Counsel agrees that this is what the contract states, but nevertheless recommends disciplinary action because it appears Respondent is engaged in unlicensed activity.

**Recommendation: Authorize a contested case proceeding and authority to settle by Consent Order with a \$1,000 civil penalty.**

**Decision: The Commission voted to accept Counsel's recommendation.**

**New Information:** The Respondent has provided additional information and has provided written information the Respondent is not a developer under the statute. The Respondent does not sell their own timeshare intervals. The Respondent is a title company that specializes in closing timeshare transactions. The Respondent does not own any time share intervals.

**New Recommendation: Close**

**New Decision: The Commission accepted counsel's recommendation.**

**83. 2018041551**

**Opened: 6/25/2018**

**First Licensed: 1/13/2006**

**Expires: 1/12/2020**

**Type of License: Affiliate Broker**

**History: None**

Complainant was interested in renting an apartment owned by Respondent, a licensed affiliate broker (note the lease was not through Respondent's brokerage).

After viewing the apartment, Complainant and Complainant's roommate each paid one-half of a \$2,500 deposit for the year-long lease. Complainant states they paid through Venmo (a money-sharing app) but never received a payment confirmation or receipt, nor were they told where the deposit funds would be held. Complainant states that after paying the deposit they began hearing stories about other tenants' bad experiences renting from Respondent, and decided they were no longer interested. Complainant informed Respondent and requested return of the security deposit. Respondent refused.

Respondent states they explained to Complainant before they made any payments that the security deposit was to hold the apartment from the application date of June 4, 2018, until the start of the lease term on July 1. Copies of the lease were provided to Complainant on June 7 and again on June 9, but they chose not to sign. Respondent then received a phone call from the roommate, who stated they had heard negative reviews about the landlord and that they no longer wanted to rent the apartment. According to Respondent, they explained that they would not receive the deposit back, as Respondent had taken the property off the market for several weeks.

Counsel requested copies of any and all documentation provided by Respondent to Complainant, none of which contemplate a deposit for holding the property. The lease does contain a security deposit requirement, but it expressly states the deposit is not an advance rent payment or a bonus to the lessor and that it is to be collected only upon execution of the lease, and then only used as security against property damage or early termination of the lease. It is evident based upon text message exchanges between the parties that the deposit paid by Complainant and their roommate was to "lock in" the lease that would commence on July 1; however, no other terms regarding the deposit were placed in writing.

Counsel would argue that Respondent failed to exercise reasonable skill and care in failing to at least document the receipt of the deposit via an executed agreement with Complainant, and possibly engaged in the mismanagement of trust funds in violation of Tenn. Comp. R. & Regs. 1260-02-.09.

Recommendation: Four (4) hours of continuing education, above and beyond what is required for the maintenance of Respondent's license, to be completed within 180 days.

Decision: The Commission voted to issue a Consent Order with a \$500 civil penalty and require four (4) hours of continuing education in contracts, above and beyond what is required for the maintenance of Respondent's license, to be completed within 180 days.

**New Information:** The issue of the duty to exercise reasonable skill and care is not applicable. The Respondent is subject to an exemption since the property was owned by the Respondent. This was not a real estate transaction by the Respondent but the Respondent's personal property being rented by the Respondent. The deposit monies were given to the Respondent for the rental unit of a property owned by the Respondent in her personal capacity. The deposit monies were given to hold the unit for several weeks and the potential

roommates suddenly decided to back out of the lease and never signed a lease and it had been clearly communicated the renters would forfeit the deposit. Also, the Respondent indicated the potential renters never requested a refund of the deposit monies.

**New Recommendation:** Close.

**New Decision:** The Commission accepted counsel's recommendation.

**84. 2020041031**

**Opened:** 6/15/2020

**First Licensed:** 11/2/2015

**Expires:** 11/1/2021

**Type of License:** Affiliate Broker

**History:** None

The Complainant is a Tennessee resident and the Respondent is a Tennessee licensed Affiliate Broker.

The Complainant represented the property owner of a home listed for sale. The Respondent presented an offer on behalf of a buyer and it was countered by the Complainant's clients. The offer was accepted and bound, and closing date was set. There were multiple offers on the property. Prior to the closing, the Buyer's lender indicated to the Complainant about delays in the mortgage process and stated the buyers were local real estate agents. The Respondent failed to disclose to the Complainant or the Complainant's clients they were licensed real estate agents. The Complainant's clients were terribly upset and felt that this should have been disclosed and believed this was purposeful. The Seller believed the Seller was denied the ability to make an informed decision in the offer selection and negotiation due to the lack of disclosure.

The Respondent provided a response and stated the Respondent lived several 100 miles away and retained the services of a local real estate agent. The Respondent never acted in the capacity of a real estate agent and used the services of a licensed real estate agent. There was no need to disclose the Respondent was a real estate agent, as it had no bearing on the transaction or the offer process.

**Recommendation:** Close.

**Decision:** The Commission accepted counsel's recommendation.

**New Information:** The Respondent is required pursuant to TREC Rules of Conduct that "[a]ll licensees shall identify themselves as a licensee when buying or selling property for themselves." 1260-02-.11 Personal Interest

**New Recommendation:** Authorize a formal hearing and assess a civil penalty of \$500 for violation of Tenn. R. & Regs .1260-02-.11 regarding personal interest.

New Commission Decision: The Commission accepted counsel's recommendation.

**New Information: The Respondent provided all documents and information concerning disclosure being made to the real estate agent.**

**New Recommendation: Close.**

**New Decision: The Commission accepted counsel's recommendation.**

85. 2020041051

**Opened: 6/15/2020**

**First Licensed: 11/16/2017**

**Expires: 1/15/2021**

**Type of License: Affiliate Broker**

**History: None**

The Complainant is a Tennessee resident and the Respondent is a Tennessee licensed Affiliate Broker.

The Complainant represented the property owner of a home listed for sale. The Respondent presented an offer on behalf of a buyer and it was countered by the Complainant's clients. The offer was accepted and bound, and closing date was set. There were multiple offers on the property. Prior to the closing, the Buyer's lender indicated to the Complainant about delays in the mortgage process and stated the buyers were local real estate agents. The Respondent failed to disclose to the Complainant or the Complainant's clients they were licensed real estate agents. The Complainant's clients were terribly upset and felt that this should have been disclosed and believed this was purposeful. The Seller believed the Seller was denied the ability to make an informed decision in the offer selection and negotiation due to the lack of disclosure.

The Respondent provided a response and stated the Respondent lived several 100 miles away and retained the services of a local real estate agent. The Respondent never acted in the capacity of a real estate agent and used the services of a licensed real estate agent.

**Recommendation: Close.**

**Decision: The Commission accepted counsel's recommendation.**

**New Information: The Respondent is required pursuant to TREC Rules of Conduct that "[a]ll licensees shall identify themselves as a licensee when buying or selling property for themselves." 1260-02-.11 Personal Interest**

**New Recommendation: Authorize a formal hearing and assess a civil penalty of \$500 for violation of Tenn. R. & Regs .1260-02-.11 regarding personal interest.**

**New Commission Decision: The Commission accepted counsel's recommendation.**

**New Information: The Respondent provided all documents and information concerning**

disclosure being made to the real estate agent.

**New Recommendation: Close**

**New Decision: The Commission accepted counsel's recommendation.**

86. 2016071791

**Opened: 12/6/16**

**First Licensed: 1/4/07**

**Expiration: 10/13/17**

**Type of License: Principal Broker**

**History: None**

Complainant is owner of real estate office and Respondent was principal broker. Complainant states Respondent was let go due to Respondent not coming to the office and that Respondent also embezzled, stole money and files from the Respondent. Complainant states that Respondent took 6 checks from the check book, disabled the business camera, showed up at closings and received company checks and wrote checks to Respondent and licensee relative of Respondent without permission of company owner. Complainant states criminal charges were filed.

Respondent, through attorney, denies all allegations and states that Respondent did not disable cameras, did not remove lists of clients, did not take a laptop as accused, did not steal and was a signatory on the bank account in questions. Respondent states respondent as principal broker did disburse commissions but did not take any monies to which Respondent was not entitled.

This matter is in civil and criminal litigation and the allegations from both sides are extensive and potential theft. This was investigated internally, but due to the pending criminal matter, the investigator was not able to secure enough information. Respondent's attorney states the civil litigation is on hold pending any action on the criminal matter.

Recommendation: Consent Order for Litigation Monitoring

Decision: The Commission voted to accept the recommendation of legal counsel.

**New Information: The Respondent's attorney has advised the State of Tennessee has dismissed all charges against the Respondent and has determined there was insufficient proof showing the Respondent violated the law. The Respondent has been exonerated of all criminal charges. Since the Respondent has been exonerated of the criminal charges of theft and the other charges and the insufficient proof concerning the allegations related to the potential issues of theft and the commission fees, there is insufficient proof to proceed in this matter.**

**New Recommendation: Close.**

**New Decision: The Commission accepted counsel’s recommendation.**

**ERICA SMITH:**

**87. 2018038221**

**Opened: 7/31/2018**

**Type of License: Unlicensed**

**History: None**

Complainant is a resident of Tennessee and Respondent is unlicensed. Complainant alleges Respondent is “acting as a professional vacation rental agent” without a proper license to rent vacation lodgings. Complainant provides the following documentation with their complaint:

- 1) screenshots of Respondent’s Airbnb profile stating Respondent is passionate about being a host for Airbnb in their local area, having spent the last few years building a network there to bring guests the best experience (143 reviews by guests);
- 2) screenshot for an Airbnb property advertised and hosted by Respondent;
- 3) screenshot for an Airbnb property advertised and hosted by another person, with that person responding to all comments as host, with a single note at the end of the advertisement noting Respondent helps as a host; and
- 4) hyperlink to a video showing, as Complainant states, Respondent “defending their property management skills” before the Board of Zoning Appeals (“BZA”).

Counsel notes Respondent was defending against Complainant’s complaint filed with the BZA requesting that Respondent’s Airbnb permits be revoked (Respondent prevailed in the BZA matter and was able to keep his permits). Complainant also alleges Respondent manages a property for a company in Chicago and another person’s property in Tennessee, but provides no documentation to support these allegations.

Respondent argues that they are not required to obtain a real estate license because Respondent is not operating a short term rental management company as alleged by Complainant. Every unit/property that Respondent manages is either owned by Respondent or leased directly by Respondent from the owner with permission, and after obtaining all necessary regulatory approval and permits. Respondent provided documentation to Counsel which verifies their statements. Additionally, Respondent does not manage anyone else’s listings or apartments and denies all allegations. Respondent provided a letter from the owner of the property in Tennessee that Respondent advertises on Airbnb as the host as referenced above, and this letter states the owner verifies Respondent is the active tenant in the property and their lease agreement gives Respondent the permission to operate the home as a short-term rental, and to the best of the owner’s knowledge, Respondent operates the property as a short-term rental. Respondent also provides a copy of the lease for the property Complainant alleges Respondent manages for another person in Tennessee, and the lease states Respondent has permission to use the property as a short term rental property.

Counsel notes that the Vacation Lodging Service (“VLS”) Rules, specifically Rule 1260-07-.01 exempts Respondent from needing a VLS license as it states “[T]he rules in Chapter 1260-07 only apply to persons who perform vacation lodging services and vacation lodging service firms, as defined and governed under T.C.A. § 62-13-104(b).” T.C.A. §62-13-104(b)(1)(C) defines a vacation lodging service as “... the business of providing the services of management, marketing, booking and rental of residential units owned by others as sleeping accommodations furnished for pay to transients or travelers staying no more than fourteen (14) days.” T.C.A. §62-13-104(a)(1)(A) states “[T]his chapter does not apply to an owner of real estate with respect to property owned or leased by such person...” Therefore, Counsel finds no evidence Respondent is engaged in any type of unlicensed activity and falls under the exceptions for licensing requirements, and recommends dismissal.

**Recommendation: Dismiss.**

**Decision: The Commission voted to defer this until the December meeting and to recommend that Respondent become licensed before that time.**

**New Information**

Respondent has failed to obtain a license despite Counsel’s advice and states they do not plan on obtaining one because Respondent believes they fall under the exception. Based on Counsel’s additional research, Counsel believes that one (1) property falls outside of the exemptions listed in T.C.A. § 62-13-104 and therefore recommends a one thousand dollar civil (\$1,000.00) penalty for unlicensed activity.

**New Recommendation: One Thousand Dollar (0\$1,000.00 civil penalty for unlicensed activity.**

**New Decision: The Commission voted to accept Counsel’s recommendation.**

**New Information:**

**After Respondent’s complaint was originally presented, the Commission decided to defer complaints like these in 2019 to allow Respondents to have a chance to obtain their VLS license, if necessary, considering the way the statute is worded referencing licensing exceptions. It was discovered there were quite a few Respondents and possibly other licensees who were confused about the exceptions in the statute. For example, this office understood how one could interpret the statute to mean a lessor of property does not need a license and falls under the exemption. This issue brought about the need for an Attorney General Opinion which was issued in June 2019. After review of the Opinion and researching the statute’s history and the legislative intent behind the exceptions, Counsel found that a lessor does need a VLS license unless the lease specifically states the Respondent can use the property for short term rentals. Additionally, the lessor must be an individual and not an LLC, per the definitions laid out in the TREC licensing statutes. Previously, Respondent’s LLC was the lessor for single property at issue, not Respondent as an individual. However, the lease has always stated that Respondent can operate the property as a short term rental. After much back and forth, Respondent remained steadfast in their argument and decided**

they did not want to obtain a license because they are not operating a short term rental management company. Respondent only manages properties that they own or lease.

Counsel has been unable to reach a settlement with Respondent and does not feel this matter is ripe for litigation. As a compromise and in hopes of avoiding discipline, Respondent agreed to amend the lease for the single property which previously prevented Respondent from qualifying for an exemption under T.C.A. §62-13-104(a)(1)(A). Specifically, Respondent has put the lease in their individual name (not Respondent's LLC) and their business partner's name. Respondent's business partner is a licensed real estate agent. Therefore, Counsel recommends dismissing this complaint.

**New Recommendation: Dismiss**

**New Decision: The Commission accepted counsel's recommendation.**

**88. 2017077801**

**Opened: 12/5/2017**

**First Licensed: 4/22/2016**

**Expires: 4/21/2020**

**Type of License: Affiliate Broker**

**History: None**

Complainant is a licensee, specifically she was Respondent's principal broker during the time the transaction referred to in the complaint occurred. Complainant alleges Respondent participated in a closing where the buyer offered her a \$2,000 bonus. Complainant states the bonus was not added to the ALTA statement but the buyer wanted to pay the bonus so she emailed Complainant an invoice to pay the bonus as he requested. The following day, Respondent took the liberty of having her mother, who is not an attorney retained by the firm, invoice and collect the bonus separately. The next day, Complainant had Respondent come in before noon and released her from the firm. Complainant provided the complete file, copy of the paid invoice to a third party not hired by the firm, and a police report.

Respondent's attorney has notified Counsel that Respondent filed a civil suit against Complainant and her firm and the matter is still pending with the money at issue being held in Respondent's attorney's trust account until the Judge makes a ruling. The docket sheet from the civil court shows the complaint was filed with the court on or around February 16, 2018 and a docket call was held on March 14, 2018. As of April 30, 2018, the civil matter is still not resolved. Counsel requested that Respondent's attorney stay in contact with Counsel, especially when the matter is resolved.

Counsel feels this issue is one for the civil courts to handle and recommends putting this complaint in Litigation Monitoring status or dismissing it unless the honorable Commission finds Respondent committed or may have committed a violation.

**Recommendation: Dismiss or put into Litigation Monitoring Status until civil case is resolved.**

**New Information:** In June 2018, Respondent entered into a Litigation Monitoring Consent Order and agreed to respond to status update requests within thirty (30) days of receiving said request. Respondent also agreed that any delay in proceedings resulting from this Order shall not impair the Commission's authority to proceed against Respondent regarding the subject matter of the civil litigation. Respondent's attorney has not responded to Counsel's request for an update regarding the civil case since January 21, 2020. According to Respondent's original response to this complaint, Complainant refused to sign documentation of a bonus being paid in cash and became irate when they learned Respondent did not collect cash at the closing because the buyer admitted they had spent the bonus. The buyer said they were "a man of their word" and wanted to pay the bonus as promised and agreed to in the Designated Agency agreement. Complainant also takes issue with the fact the bonus was not added to the ALTA statement. Respondent explains that pursuant to the HUD-1, the bonus was not added and not received at closing because the buyer did not have the cash at closing. Respondent argues there was no wrongdoing because Respondent's attorney's firm collected the \$2,000 bonus and deposited it in their attorney's trust account directly from the buyer. Additionally, Respondent notes this was purely a cash transaction with no mortgage or lending money involved and argues a bonus paid to a selling or buying agent was not required to be disclosed per federal regulations. Respondent feels the true nature of this complaint is unclear and without merit because Complainant always made it known and agreed that Respondent accepting \$2,000 in cash as a bonus was perfectly fine and stated they would take the cash and immediately hand it over to Respondent because it was payable at 100%. The civil litigation began with Respondent filing for an injunction against Complainant in the circuit court to prevent Complainant from fraudulently transferring any more funds or earned commissions that allegedly belong to Respondent. Respondent ended up filing a Motion for Recusal of the judge hearing the circuit court matter. According to the docket sheet, the Motion was denied in May 2019 and nothing else has been filed in the circuit court case. Counsel recommends dismissal of this matter.

**New Recommendation: Dismiss**

**Amended New Recommendation: Authorize a formal hearing and issue a Consent Order with \$1000.00 civil penalty for violation of Tenn. Code Ann. §62-13-312(b)(11)**

**New Decision: The Commission accepted counsel's recommendation.**

**Chairman John Griess recessed the meeting at 2:30PM**



**STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
DIVISION OF REGULATORY BOARDS  
500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243-0572  
615-741-3449 FAX 615-741-6470**

## **Notice of Formal Hearing**

Board: Tennessee Real Estate Commission

Respondent: Jacqueline Kittrell – Docket No. 12.18-20080A

Date: November 13, 2020

Time: 8:30 A.M (Central Time)

Location: WebEx – Remote  
Login Information - TBA

Participation by Board or Commission member or witnesses may be conducted by permitting participation by electronic means of communication, if necessary. This participation by electronic means shall be audible to the public at the location specified.